(17,415.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 301.

H. ABRAHAM & SON, COMPOSED OF HENRY ABRAHAM AND JACOB H. ABRAHAM, ET AL., PLAINTIFFS IN ERROR,

vs.

MARIE L. CASEY, ADMINISTRATRIX OF THE SUCCESSION OF LAURENT LACASSAGNE, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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Washington, D. C., December 18, 1899.

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UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

H. ABRAHAM & SON, Composed of Henry Abraham and Jacob H. Abraham, and Jacob H. Abraham, Administrator of Succession of Francois Chapuis, Deceased; Frank Zengel, Public Administrator and Administrator of Succession of Widow Jeanne Cave Cavailhez; Armand Moulor, Administrator of Succession of J. B. Cavailhez, and Widow C. H. Remick, in Her Own Right and as Tutrix of Her Minor Children and as Tutrix Administering the Estate of C. H. Remick, Deceased, Plaintiffs in Error,

versus

LAURENT LACASSAGNE, Since Deceased, and His Heirs, Administrators, Executors, and Assigns, and Marie L. Casey, Administratrix of the Succession of said Laurent Lacassagne, Deceased, Defendants in Error.

No. 12966.

Dinkelspiel & Hart for Abraham & Son; Albert Voorhies for public administrator and A. Moulor, administrator; W. J. Formento for Widow Remick, plaintiffs in error.

D. Caffery & Son and W. S. Benedict for defendant in error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America returnable at the city of Washington, D. C., within thirty (30) days from the thirteenth (13th) day of April, A. D. 1899.

TRANSCRIPT OF RECORD.

1

No. 11970.

Supreme Court of Louisiana.

Filed November 11th, 1895.

LAURENT LACASSAGNE
versus
H. ABRAHAM AND SON ET ALS.

No. 570.

Appeal from 17th judicial district court, parish of Vermilion.

1.

Petition.

To the Hon. A. C. Allen, judge of the 17th judicial district court in and for the parish of Vermilion, State of Louisiana:

The petition of Laurent Lacassagne, a resident of the parish of Terrebonne, State of Louisiana, respectfully shows that he is the

owner of the following-described property, situated in the parish of Vermilion, within the jurisdiction of this honl. court, to wit: That certain tract of land lying on the east side of Bayou Vermilion, having a front of ten arpents by forty arpents in depth, bounded on the west by Bayou Vermilion, on the east by public lands, on the south by property of Emile Roman, now owned by Numa St. Julien, and north by property owned by Miller, Lyon & Co., now owned by Euclide Roy, together with all the buildings and improvements thereon.

Petitioner avers that the said described property is worth the sum of ten thousand dollars.

2 He further avers that he acquired the ownership of said prop- with Albert G. Maxwell, of Vermilion parish, in judicial proceedings prosecuted in the dist. court of the parish of Vermilion, in the suit of Albert G. Maxwell *vs.* Marceline Cavailhez, No. 6 of the docket of said court, and by sheriff's deed therein, signed by Joseph S. Nunez, sh'ff of the parish of Vermilion, dated Aug. 15, 1885. He shows further that he acquired the interest of Albert G. Maxwell in said property by act of sale passed before George A. Simmons, dep. clerk of the dist. court and *ex officio* recorder and notary public, on Oct. 22, 1885.

That the whole of the said property thereby vested in petitioner.

He alleges that he is informed and so believes that the said deeds constituting his titles to the lands aforesaid were burned in the fire which destroyed the court-house and records of Vermilion parish, but that he is able to prove their contents by satisfactory evidence.

He further avers that the title to the said property has never been divested from him.

He further avers that under an order issued from this honl. court in the suit of H. Abraham & Son *vs.* Francois Chappuis, No. 491 of the docket of your court, the sheriff of Vermilion has seized and advertised for sale on May 13th, 1893, his said property; that neither of the parties to the said suit has any interest or claim or right or title whatever in and to petitioner's property so seized; that specially as the defendant Chappuis is without such interest or right of ownership in petitioner's said property, it is not liable for any of his debts or for any created by him as bearing upon the said property; that

3 the proposed sale of petitioner's property for the debts of another is illegal, unjust, and oppressive, and will work irreparable injury to petitioner, and has damaged him to the extent of one thousand dollars, five hundred of which are for attorneys' fees and five hundred for actual damages, and that said damages and injury will continue and be irreparable unless an injunction issue herein.

Wherefore, the premises considered, petitioner prays that the sheriff and H. Abraham & Son and Francois Chappuis be duly cited; that an injunction issue herein to prohibit the said proposed sale on May 13th, 1893; that after due proceedings had, said injunction be made perpetual, and that said property be decreed to be the property of petitioner, free from any incumbrances created by the said Chappuis, and be ordered restored to his possession, and

that the said H. Abraham & Son be authorized to pay petitioner the said sum of one thousand dollars damages, as well as the costs of this suit.

Petitioner further prays for general relief.

(Sig.) D. CAFFERY & SON, *Att'ys.*

Laurent Lacassagne, being sworn, says that he is the plaintiff in the foregoing petition, and that the allegations therein are true.

(Sig.) LAURENT LACASSAGNE.

Sworn to and subscribed before me this 11th May, 1893.

F. P. PERRET,
Clerk 17th Jud. Dist. Court, Parish St. Mary.

2.

Order.

Let writs of injunction issue as prayed for in the above and foregoing petition on pl'ff furnishing bond and security in the sum of three hundred and seventy-five dollars, conditioned as the law directs and according to law.

4 Granted in chambers this 11th day of May, A. D. 1893.

A. C. ALLEN,
Judge 17th Jud'l Dist. Court.

Filed May 13, '93.

ALCIDE LE BLANC,
Clerk of Court.

I hereby accept service of the foregoing petition and citation and waive all legal delays, May 13th, 1893.

A. L. LE BLANC, *Sh'ff.*

3.

Injunction Bond.

STATE OF LOUISIANA:

17th Jud'l Dist. Court, Parish of Vermilion.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON and FRANCOIS CHAPPUIS. } No. 570.

Know all men by these presents that we, Laurent Lacassagne, as principal, of the parish of Terrebonne, La., and Jean M. Beauxis, as surety, of the parish of Vermilion aforesaid, are held and firmly bound unto H. Abraham & Son, of the parish of Orleans, La., and Francois Chappuis, of the parish of Vermilion, in the just and full sum of three hundred and seventy-five dollars, lawful money of the United States of America, and for the faithful payment of which sum, well and truly to be made, we bind ourselves firmly and *in solido* by these presents.

Dated at Abbeville, La., this 13th day of May, A. D. 1893.

The condition of the foregoing obligation is such that whereas in the suit entitled and numbered as above the said above-bounden principal has filed his petition in our said district court, praying therein, amongst other things, for writs of injunction to issue
5 according to law, now, therefore, this obligation is given as a security for the payment of such damages as the defendants may sustain and recover against him in case it should be decided that the said writs had been wrongfully obtained, and in case of a full satisfaction of such judgment as may be rendered, this obligation shall be null and void; otherwise to remain in full force and effect in law.

LAURENT LACASSAGNE,
Per pro D. CAFFERY, JR., *Att'y.*
J. M. BEAUXIS.

Signed and acknowledged before me and filed on above date.
ALCIDE LE BLANC,
Clerk of Court.

4.

Peremptory Exception.

D. C. Vermilion.

LAURENT LACASSAGNE
vs.
ABRAHAM & SON & F. CHAPUIS. } No. 570.

Defendant Francois Chapuis, for peremptory exception to plaintiff's demand, avers:

1°. That said Laurent Lacassagne is estopped and his demand is barred by the suit and judgment in the matter of Jeanne Caroline Caré, widow, etc., *vs.* Marceline Cavailhez, widow, & *al.*, No. — of the fifth U. S. circuit court, western dist. of Louisiana, in chancery, in which suit final judgment was rendered in favor of the oratrix as widow in community of the dec'd Jean Baptiste Cavailhez against said Marceline Cavailhez and the estate of Clark H. Remick, dec'd.

2°. That said suit was filed, the defendants cited, and the case at issue before the pretended title of said L. Lacassagne originated, he now claiming from said Marceline Cavailhez and the estate
6 of her dec'd husband Remick.

3°. That said judgment recognizes Jeanne Caroline Caré as the lawful wife and widow of J. Baptiste Cavailhez, and that Ernestine Diaz, the mother of Marceline Cavailhez, never was the wife of said J. Baptiste Cavailhez, nor could have contracted marriage with him, as he was previously married to Jeanne Caroline Caré and had a living wife, a fact which she, Ernestine Diaz, well knew at the time.

4°. That said judgment declares null and void the act of donation or dowry from J. Baptiste Cavailhez and Ernestine Diaz to said

Marceline Cavailhez of 19th August, 1869; also act of sale of 19th of August, 1869, by Baptiste Cavailhez and said Ernestine Diaz to Clark H. Remick of the plantation now in suit.

5°. That said judgment decrees the said plantation to belong to the community of acquets heretofore existing between Jean Baptiste Cavailhez and his widow, Jeanne Caroline Caré, and recognizes her claim against said community for the sum of ($5,310) five thousand three hundred and ten dollars, with legal interest from 25th Febr'y, 1884, with legal mortgage to secure said sum with interest.

6°. That the vaguely set forth and pretended title of Laurent Lacassagne was acquired, if at all, long after the institution of and pending said suit in chancery, a fact which he well knew at the time, and he is concluded by the final judgment rendered in the premises.

7°. That respondent is residuary legatee by universal title of Jeanne Caroline Caré by her will duly homologated by the civil dist. court for the parish of Orleans, and he is therefore entitled to avail himself of said plea.

Wherefore he prays that plaintiff's demand be rejected, with costs, in so far as concerns respondent.

(Signed) ALBERT VOORHIES.
JOS. A. CHARGOIS,
Of Counsel.

7 Filed June 6, '93.

GEO. W. SUMMERS,
D'y Clerk Court.

5.

Ext. Min. Dist. Court.

TUESDAY, *June 6th*, 1893.

Court opened pursuant to adjournment.
Present: His honor A. C. Allen, judge presiding.

* * * * * * *

L. LACASSAGNE
vs. } 570.
H. ABRAHAM & SON ET ALS.

Peremptory exception filed on behalf of defendant Chapuis.

* * * * * * *

Court then adjourned to tomorrow, at 9 o'clock a. m.

6.

Ext. Minutes Dist. Court.

THURSDAY, *June 8th*, 1893.

Court opened pursuant to adjournment.
Present: His honor A. C. Allen, judge, presiding.

* * * * * * *

L. LACASSAGNE
vs.
FRANCOIS CHAPUIS, H. ABRAHAM, ET ALS. } 570.

Trial of exception fixed for Thursday, 22d inst.

* * * * * * *

Court then adjourned to tomorrow, at 9 o'clock a. m.

7.

Petition of Intervention.

To the hon. the district court in and for Vermilion parish, La.:

The petition of intervention of Francois Chapuis, testamentary executor of the succession of Jeanne Caroline Caré, widow of
8 Jean Baptiste Cavailhez, with respect represents:

That, in his said representative capacity, he joins the defendant Francois Chapuis, sued individually, for the purpose of resisting the demand in revendication of said Laurent Lacassagne herein, and he adopts the peremptory exception of estoppel and *res judicata* filed herein by said Francois Chapuis individually against the demand of said Laurent Lacassagne, and he, as testamentary executor, adopts the allegations of said peremptory exception.

Wherefore he prays to be allowed to intervene in his said representative capacity, that Laurent Lacassagne and H. Abraham & Son be cited, and that plaintiff's demand in revendication be rejected with costs, and for general relief; and as in duty bound.

JOS. A. CHARGOIS.

ALBERT VOORHIES, *Of Counsel.*

Filed June 9, '93.

GEO. W. SUMMERS,
D'y Clerk Court.

8.

Interrogatories on Behalf of Defendant F. Chappuis and Petition for Commission.

17th Jud'l Dist. Court, Vermilion P'h, La.

L. LACASSAGNE
vs.
H. ABRAHAM & SON and F. CHAPUIS. } No. 570.

To the hon. the district judge in and for the parish of Vermilion:

The defendant Francois Chapuis, individually, and the intervenor Francois Chapuis, as testamentary executor, respectfully pray that a commission issue in due course to take the testimony of Hon. H. L. Garland and Hon. E. D. Estilette, of the parish of St. Landry, whose testimony in the premises is material for the defence in

this case, and that Laurent Lacassagne and H. Abraham &
9 Son be duly notified as the law directs, and prays for all necessary orders in the premises.

And as in duty bound.

JOS. A. CHARGOIS.

ALBERT VOORHIES, *Of Counsel.*

Interrogatories propounded to Henry L. Garland and E. D. Estilette on behalf of defendant Francois Chapuis individually and of Francois Chapuis, testamentary executor.

1st Interr'y. State whether you were of counsel in matter of Jeanne Caroline Caré, widow, etc., *vs.* Marceline Cavailhez, widow, tutrix, &c., U. S. circuit court, western district Louisiana, Opelousas, and what you know about citation on defendant and her appearance in said suit.

2nd Int'y. State what has become of said record and what diligence has been made to find same.

3rd Int'y. Examine the two annexed exhibit-, letter and notice, marked B & C, and state what you know about same.

4th Int'y. State what you did with the citation served on defendant in the case of Jeanne Caroline Caré, widow Baptiste Cavailhez, *vs.* Marceline Carvailhez, widow of Clarke H. Remick, marked Exhibit A, from circuit court U. S., fifth circuit, district of La., and addressed to Marceline Carvailhez, widow of C. H. Remick, in her own right and as tutrix of her minor children and as administratrix.

State from whom and when you received the same and what *connection* or action was taken by said defendant, if at all, so far as you are concerned, reference here being made to citation issued at the city of Opelousas on the 7th day of March, 1884.

Filed June 9, '93.

GEO. W. SUMMERS, *D'y Clerk.*

10 9.

Peremptory Exception on Behalf of Defendants H. Abraham and Son.

17th Jud'l Dist. Court, Parish of Vermilion.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET AL. } No. 570.

H. Abraham & Son, defendants in above cause, now come into court and beg leave to file this peremptory exception to plaintiff's petition, and for cause of exception aver that Laurent Lacassagne is estopped and his demand barred by the suit and judgment in the matter of Jeanne Caroline Caré, widow of J. B. Cavailhez, *vs.* Marceline Cavailhez, widow, *et als.*, No. — of the fifth United States circuit court, western district of Louisiana, in chancery, in which suit final judgment was rendered in favor of Jeanne Caroline Caré,

widow of J. B. Cavailhez, as widow in community of the deceased Jean Baptiste Cavailhez, against said Marceline Cavailhez and the estate of Clark H. Remick, dec'd.

That said suit was filed, the defendants cited, and the case at issue before the pretended title of said L. Lacassagne originated.

That said judgment recognized Jeanné Caroline Caré as the lawful wife and widow of said Jean Baptiste Cavailhez, and that Ernestine Diaz, the mother of Marceline Cavailhez, never was the wife of said Jean Baptiste Cavailhez nor could have contracted marriage with him, as he was previously married to Jeanne Caroline Caré and had a living wife, a fact which she, Ernestine Diaz, well knew at the time; that said judgment declared null and void the act of donation or dowry from Jean Baptiste Cavailhez and Ernestine Diaz to said Marceline Cavailhez of Aug. 19th, 1869; also act of sale of Aug. 19th, 1869, by Baptiste Cavailhez and said
11 Ernestine Diaz to Clark H. Remick of the plantation now in suit.

That said judgment decreed the said plantation to belong to the community of acquets heretofore existing between Jean Baptiste Cavailhez and his widow, Jeanne Caroline Caré, and recognized her claim against said community for the sum of "five thousand three hundred and ten dollars, with legal interest from Febr'y 25, '884, with legal mortgage to secure said sum with interest.

That the vaguely set forth and pretended title of Laurent Lacassagne was acquired, if at all, long after the institution and pending said suit in chancery, a fact which he well knew at the time, and he is concluded by the final judgment rendered in the premises.

Wherefore your exceptors respectfully pray that this their exception be maintained, and that plaintiffs' suit be dismissed, at their costs.

And for general relief, &c.; and, as in duty bound, &c.

C. DEBAILLON, *Of Counsel.*

Filed June 9, '93.

GEO. W. SUMMERS,
D'y Clerk Court.

10.

Letter and Notice Marked Exhibit- B & C, Referred to in Interrogatories No. 8, p. 11.

"B."

NEW ORLEANS, 30 *May*, 1884.

H. L. Garland, Esq.

MY DEAR SIR: Yours of 27th just at hand. Let the case go over, but please put case at issue, so that we may prepare for trial at next term. I would be much obliged to you for a copy of your answer.

Yours truly, ALBERT VOORHIES.

12 Filed June 9th, 1893.

GEO. W. SUMMERS, *D'y Clerk.*

"C."

NEW ORLEANS, *March 17th*, 1884.

To Mrs. Widow C. F. Remick, in her own right and as tutrix of her minor children, issue of her marriage with said C. F. Remick, and as tutrix administering his estate.

MADAM: Please take notice that a commission, under date of the 15th inst., has issued from the Honl. Don A. Pardee, judge of the United States circuit court for the district of Louisiana, on the petition of Mrs. Jeanne Honore Caroline Caré, widow of Baptiste Cavailhez, in the suit in chancery before the United States circuit court at Opelousas, western district of Louisiana, entitled "Hon. Caré, widow Baptiste Cavailhez, *vs.* Widow C. F. Remick, tutrix, &c." commanding me, the undersigned notary, to take the evidence of the said Mrs. Jeanne Honore Caroline Caré, widow Cavailhez, upon due notice of time and place to the adverse party.

You are furthermore hereby notified that I will proceed to take said testimony, in my office, in this city of New Orleans, at twelve o'clock m., on Tuesday, the first day of April next (1884).

Witness my hand and seal of office.

M. VOORHIES,
Notary Public.

Filed June 9th, 1893.

GEO. W. SUMMERS,
D'y Clerk Court.

11.

Ext. Minutes of Court.

Filed June 9th, 1893.

13 Court met pursuant to adjournment.
Present: His honor A. C. Allen, judge, presiding.

* * * * * * *

L. LACASSAGNE
vs.
H. ABRAHAM & SON & ALS. } 570.

Intervention and interrogatories filed on behalf of F. Chapuis, testamentary executor.

Peremptory exception filed on part of H. Abraham & Son.

Commission ordered to issue to take the testimony of H. L. Garland and E. D. Estilette, of St. Landry parish, before the clerk of court of said parish, returnable on or before Thursday, 22d inst.

* * * * * * *

Court then adjourned to Monday, 12th inst., at 9 o'clock a. m.

12.

Ext. Minutes of Court.

TUESDAY, *Sept. 5th*, 1893.

Court opened pursuant to adjournment.
Present: His honor A. C. Allen, judge, presiding.

* * * * * * *

L. LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } 570.

By consent, fixed for Thursday, 21st inst.

* * * * * * *

Court then adjourned to tomorrow, at 9 o'clock a. m.

13.

Appearance and Exception.

17th Jud'l Dist. Court, Parish of Vermilion.

L. LACASSAGNE
vs.
H. ABRAHAM & SON ET AL. } No. 570.

14 Now into court comes Jake H. Abraham, administrator of the succession of Francois Chapuis, appears as such, and adopts as his the exception herein filed by H. Abraham & Son on June 9th, 1893, and he prays that said exception be maintained and plaintiff's suit dismissed at his costs.

And for general relief; and as in duty bound, &c.

C. DENAILLON, *Of Counsel.*

L. LACASSAGNE
vs.
H. ABRAHAM & SON. } 570.

J. B. Vinet, public administrator and dative testamentary executor of suc. of Jeanne Caré Cavailhez, dec'd, appearing herein for record, *and* adopts the plea of estoppel and *res judicata* filed by his predecessor and prays accordingly for dismissal of plaintiff's suit.

ALBERT VOORHIES, *Att'y.*

Filed Sept. 21, '93.

GEO. W. SUMMERS, *D'y Clerk.*

14.

Supplemental Petition.

17th Jud'l Dist. Court.

L. LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } No. 570.

Now into court, through undersigned counsel, comes Laurent Lacassagne, plaintiff herein, who, with leave of the court first had and obtained, files this supplemental petition, in which, adopting all the allegations of his previous petition, he says that the title in and to the property described and claimed in the said petition has never been divested from him by conveyance, judgment, or
15 otherwise; that he acquired the same with Albert G. Maxwell in foreclosure proceedings which had been instituted by Maxwell, the owner of the mortgage foreclosed on the said property previous to the institution of the suit of the widow Jeanne Caroline Caré *vs.* Mrs. C. H. Remick individually and as tutrix of her minor children, and to the rendition of a judgment therein by Aleck Boarman, judge of the 5th circuit court of the United States, at Opelousas, La., on Jan. 11, 1886; that the said judgment was rendered against Mrs. C. H. Remick in the above capacity in favor of the said Mrs. Caré, decreeing that one-half of the property claimed, as aforesaid, by petitioner belonged absolutely to the said Mrs. Caré, widow; that the remaining moiety was burdened with a tacit mortgage in favor of the said Mrs. Caré for $5,310.00, and that the reconventional demand of the defendant be allowed and given to the said Mrs. Remick, defendant, a judgment against the said Mrs. Caré for fifteen hundred dollars, with recognition of a mortgage and privilege on the said property in favor of the said defendant and plaintiff in reconventional demand for the payment of the said sum.

Plaintiff avers that the said judgment against his said author is absolutely null and void and of no force or effect whatever, and has not the slightest binding force upon petitioner and his rights for the following reasons, to wit:

First. Because the said Mrs. Caré, widow, practiced a fraud upon the said court in alleging that her husband was an alien and a citizen of France, and that she was not a citizen of the United States, but an alien also, for the reason that Baptiste Cavailhez, her said husband, had been regularly and legally naturalized as a citizen of the United States, by virtue of which naturalization she also became a
citizen thereof, and as the said false allegation was the only
16 allegation of the said Mrs. Caré that conferred *prima facie*, but wrongfully, jurisdiction upon the said court, the said judgment was rendered by a court absolutely without jurisdiction *ratione personæ* and *ratione materiæ*.

Second. Because the succession of Baptiste Cavailhez, against which that part of the judgment for $5,310 was rendered, was not

represented in the same proceedings by any person whatever, no administrator and none of the heirs thereof having appeared or been cited therein.

Petitioner avers that the said Mrs. Remick was deceived by the said fraud; that she is interested in this proceeding to the extent of her said judgment, and that no final judgment rendered herein would conclude her unless made party defendant herein; that she is at present residing and domiciled in the city of Baltimore, State of Maryland, and that it is necessary for a *curator ad hoc* — be appointed to represent her in her said capacities, with whom the proceedings herein may be *contradicted*, so as to allow of a final and conclusive judgment.

Wherefore petitioner adopts the prayer of his original petition, prays that H. Abraham & Son, the administrators of the successions of Mrs. Caré, widow Cavailhez, and of Francois Chapuis be duly, cited; that a *curator ad hoc* be appointed to represent the absentee the widow C. H. Remick, on whom service hereof may be made, and that after due hearing judgment be rendered as originally prayed for, and decreeing also that the judgment described above does not affect plaintiff's said title in any manner whatever, and that in so far as plaintiff's property or his rights are affected thereby — be declared absolutely null and void.

Petitioner further prays for general relief.

D. GAFFERY & SON, *Att'ys.*

17 Before me, the undersigned authority, personally came and appeared Laurent Lacassagne, who, being sworn, deposes and says that the facts and allegations contained in the foregoing supplemental petition are true and correct.

LAURENT LACASSAGNE.

Sworn to and subscribed before me this 21st day of September, 1893.

ALCIDE LE BLANC,
Clerk of Court.

Filed Sept. 21, '93.

GEO. W. SUMMERS, *D'y Clerk.*

15.

Ext. Minutes of Court.

THURSDAY, *Sept.* 21*st*, 1893.

Court opened pursuant to adjournment.

Present: His honor A. C. Allen, judge, presiding.

* * * * * * *

L. LACASSAGNE
vs. } 570.
H. ABRAHAM & SON ET ALS.

Appearance and exception filed on the part of J. H. Abraham, adm'r, and on the part of J. B. Vinet, public adm'r.

Supplemental petition filed and the allowance of same tried and held under advisement.

* * * * * * *

Court then adjourned to tomorrow, at 9 o'clock a. m.

16.

Ext. Minutes of Court.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Be it remembered that on this Monday, the fourth day of December, 1893, being a day fixed for holding a session of the 17th jud'l district court in and for the parish of Vermilion, State of La., 18 being a civil term, were present his honor A. C. Allen, judge, presiding, etc., etc.

* * * * * * *

L. LACASSAGNE
vs. } 570.
H. ABRAHAM & SON ET AL.

On motion of plaintiff's counsel, through M. T. Gordy, Esq., the supplemental petition filed herein was withdrawn and trial of exceptions fixed for Friday, 15th inst.

* * * * * * *

Court then adjourned to tomorrow, at 9 o'clock a. m.

"DOCUMENTS OFFERED IN EVIDENCE ON PART OF PL'FFS IN EXCEPTION."

17. "1."

Bill in Chancery.

To the hon. judge of the circuit court for the western district of Louisiana, holding sessions at Opelousas:

Jeanne Caroline Caré, widow of Baptiste Cavailhez, a citizen of France, brings this her bill in equity against Marceline Cavailhez, widow of C. H. Remick, in her own right and as tutrix of her minor children, Frank C. Remick, Mary Isabella Remick, Clement Arthur Remick, and Marceline L. Rita Remick, and as tutrix administering the estate of C. H. Remick, dec'd, citizens of the State of Louisiana and residing in the parish of Vermilion; and your oratrix avers:

1. That she was lawfully married unto said Baptiste Cavailhez on the 10th December, eighteen hundred and thirty-three.

2. That said Baptiste Cavailhez, during the existence of said marriage, purchased and became the owner of the following properties, to wit:

First. A town lot in Abbeville, parish of Vermilion, being No. 33

of plat of said town, with buildings and improvements, said
19 lot bounded west by Jefferson street, north by Concordia street, south by lot No. 34, and east by lot No. 41.

Secondly. A certain plantation situated on east side of Bayou Vermilion, in aforesaid parish, with a front of ten arpents on said bayou by forty arpents in depth, bounded west by Bayou Vermilion, east by public lands, south by property of Numa St. Julius, and north by property of Euclide Roy, together with said plantation, mules, horses, milch cows, carts, wagons, tools of husbandry, and other plantation paraphernalia.

3. That said purchases, which took place respectively on 15th day of April, 1863, and on 3rd day of January, 1862, became community property between said Baptiste Cavailhez and your oratrix and from said dates respectively burdened with tacit mortgage to secure the reimbursement of all the moneys received for her and from her by her said husband and converted to his own use.

4. That in the meantime, as your oratrix is informed and avers, the said Baptiste Cavailhez illegally contracted matrimony with Ernestine Diaz, since deceased, which said marriage was an absolutely nullity, as said Baptiste Cavailhez was at the date thereof the lawful husband of your oratrix.

5. That of said illegal marriage there was born the said Marceline Cavailhez, now widow of C. H. Remick.

6th. That said Baptiste Cavailhez, combining and confederating with said Ernestine Diaz, C. H. Remick, and Marceline Cavailhez for the purpose of defeating the aforesaid rights of your oratrix and of transferring to the issue of said unlawful wife all his succession, did on 19th of August, 1869, appear before the recorder of the parish of St. Martin and then and there executed the following **act, to wit:**

First. An act of sale of the aforesaid property by said
20 Baptiste Cavailhez to said C. H. Remick for the nominal sum of fifteen thousand dollars, and, secondly, a marriage contract between said C. H. Remick and Marceline Cavailhez, in which act the said Baptiste Cavailhez and Ernestine Diaz settled as the dower of said Marceline Cavailhez a promissory note of seven thousand dollars, which constituted a part of the stipulated price of fifteen thousand in the above-mentioned act of sale; all of which will more fully appear by reference to both of said acts, which are annexed as a part hereof.

7. That said stipulated price of fifteen thousand dollars was merely nominal, and said amount was never paid, nor was it intended between the parties to said two acts that it should ever be **paid.**

8. That the purpose of said acts was simply to divert the property of the estate of said Baptiste Cavailhez before his death, so as defeat the rights of recovery of the legal widow of said Baptiste Cavailhez, and to benefit exclusively the daughter of the unlawful wife, and said acts are consequently null and void in *fraudence legis.*

9. Further, that the succession of your oratrix's said husband,

Baptiste Cavailhez, is indebted unto her in various sums of money which her said husband had in the course of her said marriage received for her and from her, which funds were her separate paraphernal property, to wit, about the year 1842 the sum of twelve hundred dollars, and subsequently at different intervals of time the sum of eight hundred dollars, of four hundred dollars, of four hundred dollars, of one hundred and ten dollars, of four hundred dollars; also, while trading in Mexico in 1844, the sum of two thousand dollars, and afterwards, by bill of exchange on Paris, France, two hundred dollars in 1846, making a total of five
21 thousand three hundred and ten dollars ($5,310.00).

10. That said Baptiste Cavailhez died on — day of April, 1882.

11. That said matters herein alleged are without relief, unless on the equity side of this honl. court.

Wherefore your oratrix prays for citation against the said Marceline Cavailhez, widow of C. H. Remick, dec'd, in her individual capacity as tutrix of her said minor children and as tutrix administering the estate of C. H. Remick aforesaid; that said acts of sale and of marriage contract, passed before the recorder of St. Martin on the 19th day of August, 1869, be declared null and void; that your oratrix be recognized as the widow of said Baptiste Cavailhez and his lawful wife up to the date of his death; that the marriage between said Baptiste Cavailhez and Ernestine Diaz, both now dec'd, be declared absolutely null and void; that the aforesaid town lot and plantation be decreed to be still the property of the estate of Baptiste Cavailhez; that your oratrix be recognized as the owner of one undivided half of said town lot and plantation; that she be recognized as a mortgaged creditor of said Baptiste Cavailhez in the sum of five thousand three hundred and ten dollars ($5,310.00), with legal interest from judicial demand, on the undivided half thereof belonging to said Baptiste Cavailhez.

And your oratrix prays for general relief; and as in duty bound, etc.

CAROLINE CAVAILHEZ, *Veuve, Née* CARÉ.

ALBERT VOORHIES,
F. VOORHIES,
Solicitors.

Sworn to and subscribed before me this 25th day of February, A. D. 1884.

M. VOORHIES,
[SEAL.] *Notary Public.*

22 Filed March 5th, 1884.

W. F. ANDERSON, *D'y Cl'k.*

A true copy.

D. MAYO,
D'y Clerk U. S. Circuit Court at Opelousas, La.

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

18. "2."

Sale—from B. Cavailhez and E. Diaz to C. H. Remick.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Be it known, on this nineteenth day of August, A. D. one thousand eight hundred and sixty-nine, before me, John D. Broussard, recorder, *ex officio* notary public, in and for the parish of St. Martin, undersigned, and in the presence of the witnesses hereinafter named, also undersigned, personally came and appeared Baptiste Cavailhez and Ernestine Diaz, herein duly assisted by him, both of the parish of Vermilion, in this State, who declared that, for and in consideration of the conditions hereinafter set forth, they do by these presents grant, bargain, transfer, assign, and set over, with all legal warranties and with subrogation and substitution to all their rights and actions of warranty against all former owners, unto C. H. Remick, also of the parish of Vermilion, here present, purchasing for himself, his heirs and assigns, and acknowledging possession and delivery thereof:

1st. A town lot situated in the town of Abbeville, parish of Vermilion, being lot 33, thirty-three, of the plat of the town of Abbeville, together with all the buildings, constructions, and fences thereon situated and thereto belonging, said lot bounded on the western side by Jefferson street, on the north by Concordia
23 street, south by lot No. (34) thirty-four, now belonging to Cestia & Foutelier, France, east by lot No. (41), forty-one, presently occupied by Voorhis Trahan and Paulin Foutelier.

2nd. A certain plantation situated east side of Bayou Vermilion, having a front of ten arpents on said bayou by forty arpents in depth, together with all the buildings and fences thereon erected and thereto belonging, bounded on the western side by public lands, on the southern side by the property of Numa St. Julien, and on the northern side by the heirs of Euclide Roy, together with said plantation, all the mules, horses, milch cows, carts, wagons, tools of husbandry, and generally everything now on it and appertaining to the same, with the exception, however, of the crop now being raised, which is not included in this sale.

This sale is made for and in consideration of the price and sum of fifteen thousand dollars, payable as follows, to wit:

The sum of seven thousand dollars payable on demand, and for which amount the purchaser has this day subscribed his note, payable to the bearer and bearing eight per cent. interest from and after the first day of October next, eighteen hundred and sixty-nine, and for the balance of the price purchase, to wit, the sum of eight thousand dollars, the purchaser binds and obligates himself to pay the same in four equal instalments at one, two, three, and four years from date, and for which amount he has this day executed his four promissory notes, payable respectively to the bearer or bearers in one, two, three, and four years from date, each for the

sum of two thousand dollars, and bearing eight per cent. interest per annum from and after maturity until final payment. All of said notes, for identification herewith, have been by the undersigned recorder paraphed "*ne varietur*."

Now, in order the better to secure the payment of said sum
24 of fifteen thousand dollars and of said notes at their respective maturity, as well as the interest to accrue on the same, in case of non-payment of the same at maturity the property herein conveyed is, by consent of the purchaser, to remain specially mortgaged, affected, and hypothecated in favor of the vendors or the future holder or holders of the notes herein described.

And the purchaser now declares that he expressly dispensed the undersigned recorder with the production of the certificate required by article 3328 of the Civil Code of this State, hereby exonerating the undersigned from all liability that may result from the non-production of said certificate. Internal-revenue stamps of the United States for the sum of fifteen ($15.00) dollars are hereto affixed and cancelled.

Thus done and passed in office, at St. Martinsville, parish aforesaid, on the day, month, and year first above written, in presence of Alcibiade De Blanc and Alfred F. Pescheir, competent witnesses, who hereto sign their names with the parties and me, recorder, the whole after due reading.

(Original signed) B'TE CAVAILHEZ.
ERNESTINE DIAZ.
CHAS. H. REMICK.

Witnesses:
ALCIBIADE DE BLANC.
ALFRED F. PESCHEIR.
JOHN D. BROUSSARD, *Recorder.*

RECORDER'S OFFICE, PARISH OF ST. MARTIN.

I hereby certify the foregoing to be a true and correct copy of the original act on file and of record in this office.

Given under my hand and seal of office, at St. Martinsville, this 19th day of August, A. D. 1869.

ALFRED F. PESCHEIR,
D'y Recorder.

Recorded August 24th, 1869.

25 STATE OF LOUISIANA, }
Parish of Vermilion. }

I certify the foregoing to be a true copy taken from Book F of Alienations and Notarial Acts, pages 378 & 379, No. 2105 of records of this office, together with the erasures or cancellations made across the same in said book by Lee Perret, former recorder, as they appear in said book, the erasures, etc., being copied across in red ink.

Given under my hand and seal this 29th Dec., 1884.

(Sig.) LASTIE BROUSSARD,
Clerk of Court and Recorder.

Filed Jan'y 11th, 1886.

——— ———,
D'y Clerk U. S. Circuit Court.

A true copy.

D. MAYO,
D'y Clerk U. S. Circuit Court.

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

19. "3."

Marriage Contract.

ETAT DE LA LOUISIANE, }
Paroisse St. Martin. }

L'an mil huit cent Soixante neuf, ce dixneuvieme Jour du mois d'aut Pardevant John D. Broussard, recorder *ex officio* notaire public, dans et pour la Paroisse St. Martin, soussigné, et en presence destemoins ce apres rummés acessi soussignés ont personnellement comparu le sieur Baptiste Cavavailhiez et dame Ernestine Diaz, la dite dame dument assistée et autorisee a l'effet des presentes de la Paroisse Vermilion, en cet Etat Lequels en consideration du marriage que leur fille Marceline Cavailhez doit contracter in cessammont, lui ont par ces presentes fait donation, pure simple et irrevocable et sous meilleure forme que donation puisse ce faire D'un billet de la somme de septmille piastres sonscrét ce jour par
26 le sieur C. H. Remick payable a demande au porteur avec huit pour cent d'interets a partir du premier Octobre prochain, 1869, le payment du quel billet est guarantie par hypotheque sur ome certaine propriété transferré et vendue ce jour, par les comparants au Sieur Remick par acte au Rapport du Recorder soussigné auquel acte le present billet est identifié par la paraphe du Recorder soussigné aussi transferés tous les droits hypothecaires et autres qui sont et peurent être attachés au billet plus decrit Cette donation est faite comme il est dit cidessus en consideration du marriage que la demoiselle donation est sur le point de contracter et de plus parceque telle est la volonté des sieurs et dames donataires aux presentes est intervenue demoiselle Marceline Cavailhez enfant mineure dument assisteé par son pere qui declare acceptes la susdite donation avec reconnaissance ont aussé comparu le sieur C. H. Remick d'une part et demoiselle Marceline Cavailhez cette dernière assistée et autorisée par son père d'autre par Lesquels ont arreté ainse qu'il suit les conditions civiles du marriage qu'ils se proposent de contracter in cessament selon les lois de cet Etat Art. 1er Les futures epoux adoptant le regime de la communuaté tel qu'il est etablie par le Code Civil de cet Etat Art. 2, le future époux paiera de son chef les dettes dont il sera debiteur au jour de la celebration du marriage. Art. 3° Les biens de la future épouse consistent en une somme de sept mille piastres representeé par le billet decrit dans la donation qui précede, lequel a été en presence du notaire et des temoins soussignés remis par demoiselle Marceline Cavailhez

au Sieur C. H. Remick, qui le reconnait au quel appart le future epoux demeura chargé vis a vis de la future epouse, par le seul fait du marriage, et de la remise du dit billet, sans qu'il soit besoin d'au eune autre quittance on décharge et si le marriage venait de man quer chose assez improbles le sieur Remick devra rendre a 27 demoiselle Marceline Cavailhez, sa future, le billet sus decrit ou lui en payer le montant, cette remise on plutot ce transfert par la demoiselle comparante au sieur Remick n'etant fait qu'en vertu du marriage projété entre eux tous les droits hypothecaires attachés au sus dit billet ne s'etiendront que d'autant que le marriage, sera fait ou le montant du billet payé par le Sieur Remick a la demoiselle comparante Dont acte, fait et passé au Bureau a St. Martinville paroisse susdite, les jour, mois et au que dessus en presence des Sieurs temoins competents qui ont signé avec les parties et moi Recorder apres lecture faite quatre mots rayés nuls. trois mots interlignés approvés avant que de signer.

(Original signed) MARCELINE CAVAILHEZ.
CLARK H. REMICK.
ERNESTINE DIAZ.
B'TE CAVAILHEZ.
ALCIBIADE DEBLANC.
ALF. F. PESCHEER.
JOHN D. BROUSSARD, *Recorder.*

STATE OF LOUISIANA, }
Parish of St. Martin. }

I, the undersigned, deputy clerk, *ex officio* deputy recorder, duly sworn and qualified, in and for the parish and State aforesaid, do hereby certify the forgoing to be a true and correct copy from the original act of record and on file in this office, duly recorded therein on the 19th day of August, 1869, in vol. 33 of Conveyances, page 393, under No. 1358.

In testimony whereof I have hereunto signed my name and affixed the seal of office, at St. Martinville, parish of St. Martin, this 5th day of February, A. D. 1884.

(Sig.) W. B. EASTON,
[SEAL.] *D'y Clerk, ex Officio Recorder.*

Filed Jan'y 11th, 1886.

C. MAYO,
D'y Clerk U. S. Courts.

A true copy.

C. MAYO,
D'y Clerk U. S. Courts.

Filed Dec. 15, '93.

GEO. W. SUMMERS,
D'y Clerk Court.

20. "3 C."

Citation from U. S. Circuit Court.

UNITED STATES OF AMERICA,
District of Louisiana.

28 Circuit Court of the United States, Fifth Circuit, District of Louisiana.

JEANNE CAROLINE CARE, Widow of Baptiste Cavailhez,
vs.
MARCELINE CAVAILHEZ, Widow of C. H. Remick. } No. —.

The President of the United States to Marceline Cavailhez, widow of C. H. Remick, of Vermilion parish, in her own right and as tutrix of her minor children and as administratrix:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and district of Louisiana, in the city of Opelousas, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from Opelousas, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Opelousas, this seventh day of March, A. D. one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth year.

Teste: W. F. ANDERSON, *D'y Clerk.*

21. "4."

Answer of M. C. Remick.

Circuit Court of U. S., W. Dist. La.

JEANNE CAROLINE CARÉ, Widow,
vs.
MARCELINE CAVAILHEZ, Widow. } In Chancery.

29 Respondent, Marceline Cavailhez, widow, etc., for answer denies all the allegations made by plaintiff in relation to the marriage of Baptiste Cavailhez and said plaintiff and in relation to the sums of money which plaintiff alleges are due to her by the estate of said B. Cavailhez, as respondent knows not that said obligations are true and has no means of information.

Respondent further denies that the pl'ff had on or before or after the 19th August, 1869, any rights, either of ownership or as creditor, to and upon the property described in her petition. Re-

spondent further denies that there ever was any combination or conspiracy or confederation between either respondent or her deceased husband and Baptiste Cavailhez and Ernestine Diaz for the purpose of defrauding plaintiff or for the purpose of defeating said plaintiff's right to any property.

Respondent further denies that there ever was any combination or any confederation between Ernestine Diaz and Baptiste Cavailhez for the purpose of defrauding plaintiff.

Respondent further avers that by the marriage between Baptiste Cavailhez and Ernestine Diaz each was invested with the rights and charged with the obligations which the laws create.

Respondent further avers that even it be true that Baptiste Cavailhez and plaintiff had been married, the marriage between Cavailhez and Ernestine Diaz was legal and had its legal effects as far as Ernestine Diaz and your respondent are to be affected.

Respondent further avers that she was the only child of the marriage between Cavailhez and Diaz and the only child and heir of the former.

Respondent further avers that the sale made on the 19th of August, 1869, by Cavailhez & Diaz to Clarke H. Remick was
30 real and *bona fide;* and she further avers that the donation made on the same day by said Cavailhez and Diaz to respondent was real and *bona fide.*

Respondent further avers that the said sale and the said donation were recorded in the office of alienations of parish of Vermilion on or about 24th August, 1869.

Respondent further avers that immediately after the passing of said sale Clark H. Remick, her husband, took actual possession of the properties so sold to him and was the *bona fide* possessor thereof (except what he sold) to time of his death; that at his succession sale respondent bought said property.

That during the life and the possession of the said Clark H. Remick of the plantation he placed valuable and necessary improvements, to wit, buildings, machinery, fencing, canals, etc., in said property, and so has your respondent since she has had title and possession of the same.

That said improvements have increased and enhanced the value of the said plantation to the amount of ten thousand dollars; that respondent, in case of eviction from said property, being a possessor in good faith, is entitled to receive the cost, which is fifteen thousand dollars, of said improvements, or at least the amount of ten thousand dollars, which is the enhanced value of the said plantation given to it by said improvements.

Respondent further avers that in case of eviction from said property she is entitled to recover from plaintiff the sum of eight thousand dollars, which the said Clark H. Remick paid of the price of fifteen thousand — stipulated by the act of sale of 19th August, 1869, from Cavailhez & Diaz to said Remick.

Respondent further avers that, she and her husband before her being possessors in good faith and with title translative
31 of property for more than ten years before the service of cita-

tion in this suit, the action of pl'ff is prescribed by the lapse of ten (10) years, which she here specially pleads.

Wherefore respondent prays that the suit of plaintiff be dismissed, or in case of judgment in favor of plaintiff against respondent for the property, then that there be judgment in favor of respondent against plaintiff in the sum of eight thousand dollars and in the further sum of fifteen thousand dollars.

And that there be judgment decreeing that respondent remain in possession of said property until payment to her by pl'ff of the above sums.

And respondent prays for any other decree required and necessary and for general relief.

MARCELINE C. REMICK.

I swear that the allegations made in the foregoing answer are true.

MARCELINE C. REMICK.

Sworn to and subscribed this 18th Oct., 1884, before me, clerk of court of Vermilion, La.

LASTIE BROUSSARD,
Clerk Dist. Court.

Filed Oct. 27, '84.

W. F. ANDERSON, *D'y Clerk.*

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

22. "5."

Judgment of U. S. Circuit Court.

5th Circuit, U. S. Court, West. Dist. La. In Chancery.

JEANNE CAROLINE CARÉ, Wid.,
vs.
MARCELINE CAVAILHEZ, Widow, etc.

This case came up for trial, and the parties adduced their
32 evidence.

The said evidence and the law being in favor of oratrix, Jeanne Caroline Caré, widow of Baptiste Cavailhez, dec'd, as to her claims as surviving widow and creditor of his succession—

It is ordered, adjudged, and decreed:

1st. That the sale made on the 19th August, 1869, by Baptiste Cavailhez and Ernestine Diaz to Clark H. Remick of the following-described property be annulled and avoided, the said property in said act of sale being described as follows, to wit:

"First. A town lot in Abbeville, parish of Vermilion, being No. 33 of plat of said town, with buildings and improvements, said lot bounded west by Jefferson St., north by Concordia street, south by lot No. 34, and east by lot No. 41.

Secondly. A certain plantation situated on the east side of Bayou

Vermilion, in the aforesaid parish (Vermilion), with a front of ten arpents on said bayou by forty in depth, with buildings and improvements, bounded west by Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with said plantation, mules, horses, milch cows, carts, wagons, tools of husbandry, and other plantation paraphernalia."

2nd. It is ordered and decreed that the said oratrix and plaintiff in bill, Jeanne Caroline Caré, widow, be, and is hereby, recognized as the lawful widow of Baptiste Cavailhez, and as such that she be, and is hereby, entitled to and decreed to be the owner of the undivided half of all the property above described.

3rd. It is further ordered that the act of donation or dowry from Baptiste Cavailhez and Ernestine Diaz to Marceline Cavailhez, made on the 19th of August, 1869, be, and is hereby, decreed to be null and void and of no effect, and that Ernestine Diaz, the
33 mother of defendant, Marceline Cavailhez, never was the lawful wife of Baptiste Cavailhez.

4th. It is further ordered and decreed that the said oratrix and plaintiff in bill have judgment against the estate of Baptiste Cavailhez in the sum of five thousand three hundred and ten dollars, with legal interest from the 25th day of February, 1884.

That her mortgage to secure the aforesaid sum and interest upon the property of Baptiste Cavailhez, to take effect from the 13th day of April, 1863, be recognized and enforced.

And because the law and the evidence is in favor of the defendant, Marceline Cavailhez, widow of Clark H. Remick, and as against the oratrix and plaintiff in bill as to the reconventional demand for improvements she placed on the plantation, it is further decreed that the defendant, Marceline Cavailhez, widow of C. H. Remick, have judgment against the oratrix for the sum of fifteen hundred dollars, and to insure the payment thereof it is further decreed that she, the said defendant, have a privilege and mortgage on the property above described.

ALECK BOARMAN, *Judge.*

A true copy.

C. MAYO,
D'y Clerk U. S. Courts.

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

23. "6."

Writ of Possession and Return of U. S. Marshal Thereon.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA,
Parish of St. Landry.

To A. C. Gibson, U. S. marshal, western district of Louisiana, or any of his deputies, Greeting:

34 Whereas on the 11th day of January, 1886, the Hon. Aleck Boarman, sitting as judge of the fifth (5th) circuit court, western district of Louisiana, at the town of Opelousas, parish of St. Landry, Louisiana, did in a certain case entitled Jeanne Caroline Caré, widow, *vs.* Marceline Cavailhez, wid., *et al.*, 5th circuit court, west. dist. of La., in chancery, under a judgment and decree, of which a true and correct copy is hereunto annexed and made a part of this writ; and whereas said suit was instituted on the fifth day of March, one thousand eight hundred and eighty-four: now, therefore, if three days after the service of this writ on Marceline Cavailhez, wid., etc., defendant in above suit, she refuses to deliver the property described in the aforesaid judgment to the said Jeanne Caroline Caré, wid., or to quit the property fully described in aforesaid judgment, then, in that case, you are hereby ordered and commanded to eject defendant and those who may be holding said property described as aforesaid under the said defendant by private deed of transfer or otherwise since the institution of aforesaid suit, to wit, March 5th, 1884, and during the pending of said suit; and you are further ordered to put the said Jeanne Caroline Caré, wid., in full possession of the aforesaid described property as provided by law.

And you are further ordered to execute this writ in all respects as provided by law; and how you shall execute this writ make due return to this court as provided by law and hereon endorse the manner in which you shall have executed the same.

Witness the Hon. Aleck Boarman, judge of said court, this 2d day of February, 1886.

C. MAYO,
D'y Clerk U. S. Courts.

Filed Febr'y 2, -886.

C. MAYO,
Dep-ty Clerk.

A true copy.

B. BLOOMFIELD,
Dep-ty Clerk U. S. Circuit Court.

35 Received the within writ of possession and a copy of judgment on the 3rd Feb'y, 1886, and I proceeded to the property described in within judgment, in Vermilion parish, and executed the same on the 5th day of Febr'y, 1886, by serving the writ and copy of judgment on Alfred Aminstor, who was living in the house

and had charge of the property and he being a major, and I took possession of said plantation and improvements, and then placed them in the possession of F. Brulard, as the agent of Jeanne Caroline Caré, widow.

S. C. PRICE,
Dep-ty U. S. Marshal.

Opelousas, Feb'y 8th, 1886.

Returned and filed Feb'y 10th, 1886.

C. MAYO,
Dep-ty Clerk U. S. Courts.

A true copy.

B. BLOOMFIELD,
D'y Clerk U. S. Circuit Courts.

Attest: B. BLOOMFIEED,
D'y Clerk U. S. Circuit Courts.

I further certify that on the 10th day of April, 1886, an alias writ of possession was placed in the hands of the deputy marshal similar in all respects to the original writ, and the following is a true and correct copy of the return of said deputy marshal on said "alias" writ of possession:

"Received within writ and copy of judgment on the 10th day of April, 1886, and proceeded to the plantation within described, in Vermilion parish, and finding no one on whom to serve the same, except F. Brulard, formerly the agent of Jeanne Caroline Caré, wid., and now agent of F. Chapuis, test. exe't'r, in full possession of the aforesaid plantation and its appurtenances, and being the same party whom I placed in possession of said plantation on the 5th of Febr'y, 1886, I hereby return this writ, together with the copy, this 13th of April, 1886.

S. C. PRICE,
D'y U. S. Marshal."

A true copy.

B. BLOOMFIELD,
Dep-ty Clerk U. S. Circuit Court.

36 Attest: B. BLOOMFIELD,
D'y Clerk U. S. Circuit Court.

Filed Dec. 15, -893.

GEO. W. SUMMERS,
D'y Clerk Dist. Court.

24. "139 A."

Sheriff's Sale to Maxwell and Lacassagne.

STATE OF LOUISIANA,
Parish of Vermilion.

Be it remembered that on this Saturday, the (15th) fifteenth day of August, 1885, by virtue of an order of seizure and sale issued

out of the honorable the twenty-fifth judicial district court in a
for the parish and State aforesaid in suit entitled Albert G. Ma
well *vs.* Marceline Cavailhez, No. 6 of the docket of the dist. cou
of said parish and to me directed—

I did seize all the rights, titles, interests, and demand of t
defendant Marceline Cavailhez in and to the following-describ
property to satisfy said writ, to wit:

One certain tract of land lying and being situated in this pari
on the east side of Bayon Vermilion, being the tract upon which
situated the residence of defendant, measuring ten arpents front
forty arpents deep, bounded above by Miller, Lyons & Co., bel
by Emile Roman, east by —— ——, and west by the Bayou V
milion, with all the buildings and improvements, machineries, et
thereon situated.

Having duly served a notice of seizure on said defendant, pr
ceeded, after the legal delays had expired, to advertise the above a
foregoing described property in the "Monitional" newspaper, pu
lished in said parish, during thirty clear days, as required by la
to be sold on Saturday, the 18th day of July, 1885, for cash to t
last, and highest bidder, at the hall of Abbeville Hook a
37 Ladder Co., the place designated for a court-house, with be
fit of appraisement.

And on said Saturday, the 18th day of July, 1885, I, Joseph
Nunez, sheriff in and for the parish and State aforesaid, did on sa
day and date, as aforesaid, repair to the court-house door, the pla
designated for making sheriff's sales of said parish, between t
hours of 11 o'clock a. m. and 4 o'clock p. m., for the purpose of ma
ing said sale, and after having first caused said land to be apprais
as required by law, read in an audible and distinct voice to the b
standers the advertisement from the Monitional newspaper showi
the terms and conditions of said sale as aforesaid, and also a certi
cate from Lastie Broussard, clerk and *ex officio* recorder of mortgag
showing the number and nature of the mortgages affecting sa
property, proceeded to offer the same for sale, and after offering sa
land, &c., for a reasonable length of time and not being able to o
tain any bid therefor, I announced that said property would be
advertised to be sold on twelve months' credit, according to law, sa
sale to take place on Saturday, August 15th, 1885; and on said d
I again repaired to the court-house for the purpose of re-offeri
said property for sale for whatever it would bring on twelve mont
credit.

And having again read the advertisement, certificate of mortgag
from the clerk and *ex officio* recorder, showing the different mortgag
resting on said property, proceeded to offer the said land, togeth
with all the buildings and improvements, machineries, etc., there
situated, and after offering the same for a reasonable length of tim
Messrs. Albert G. Maxwell and Laurent Lacassagne, being the l
and highest bidders, became the purchasers thereof for the price a
sum of five thousand one hundred ($5,100.00) dollars. T
38 purchasers having settled all costs, State and parish ta
due upon the same, amounting to one hundred and nin

(77/100) dollars, applied the balance of the purchase price in part payment of their respective mortgages, and furnished a bond in favor of the sheriff, in the sum of six hundred dollars, to secure him in the event that the 3rd opposition filed in said suit should be decided in favor of said opponents:

Now, therefore, I, Joseph S. Nunez, sheriff, do hereby sell, assign, transfer, and deliver, in full property, unto the said Albert G. Maxwell and Laurent Lacassagne all the right, title, interest, and demand of defendant Marceline Cavailhez in and to the above-described property:

To have and to hold the same unto them, said purchasers, their heirs and assigns, from and after the date hereof.

In testimony whereof I have signed these presents on this 17th day of August, A. D. 1885, in presence of Messrs. Alcide Le Blanc and Geo. W. Summers, competent witnesses, who have signed their names hereto.

(Original signed) J. S. NUNEZ, *Sheriff.*

Witnesses:
ALCIDE LE BLANC.
GEO. W. SUMMERS.

Recorded in vol. 1 of Sheriff's Sales No. 2, page 2, August 21, '85.
GEO. W. SUMMERS,
D'y Clerk & Recorder.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in this office.

Given under my official signature and seal of office this 31st day of August, 1885.

39 GEO. W. SUMMERS,
D'y Clerk and Recorder.

Exhibit A. Filed April 15, '86.
J. B. BEATTIE, *D'y Clerk.*

Filed Dec. 15, '93.
GEO. W. SUMMERS, *D'y Clerk.*

25. "139 B."

Sale from A. G. Maxwell to L. Lacassagne.

UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Vermilion. }

Be it known that on this the 22d day of October, *anno Domini* one thousand eight — and eighty-five, before me, George W. Summers, d'y clerk district court, *ex officio* recorder and notary public, duly commissioned and qualified as such, in and for the parish of Vermilion, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared

Albert G. Maxwell, of lawful age and a resident of the parish aforesaid, who declared that for and in consideration of the price and sum and on the conditions hereinafter set forth and expressed he had and by these presents he does grant, bargain, convey, sell, assign, transfer, set over, and deliver in full property and with full guarantee against all troubles, debts, mortgages, evictions, donations, alienations, or other incumbrances whatsoever, and with full subrogation to all his rights of action in warranty against any and all previous owners, unto Laurent Lacassagne, also of lawful age and resident of the city of New Orleans, this State, here present, accepting, acquiring, and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following described property, to wit:

The undivided one-half interest in and to a certain tract
40 of land lying and being situated in this parish on the east side of the Bayou Vermilion, measuring ten arpents front by forty arpents deep, bounded north by Miller, Lyons & Co., south by Emile Roman, east by —— ——, and west by the Bayou Vermilion, and containing in the aggregate four hundred arpents, more or less, together with the buildings, machineries, and improvements thereon situated—

Being the portion purchased by said vendor at sheriff's sale on the 15th day of August, A. D. 1885, and duly recorded in vol. 1 of sh'ff's sales under No. 2, page 2, Aug't 21, –885:

To have and to hold the said above-described property unto him, the said Laurent Lacassagne, his heirs and assigns forever, from and after the date hereof; and the said A. G. Maxwell, the vendor herein, his heirs and legal representatives, will warrant and forever defend the title of the said Laurent Lacassagne, his heirs and assigns, in and to the property herein conveyed against the lawful claim or claims of himself and his heirs.

This sale is made and accepted for and in consideration of the price and sum of two thousand five hundred and fifty dollars cash in legal current money of the United States of America, the receipt whereof is hereby acknowledged by the vendor, who grants a full discharge and acquittance therefor.

The parties have produced the certificate of mortgages required by article 3364 of the Revised Civil Code of Louisiana, hereto annexed and made part hereof.

The purchaser assumes the payment of all taxes due on said property.

Thus done and passed at my office, at Abbeville, in said parish, in presence of Messrs. Henry B. Lyons and Robert P. O'Bryan, competent witnesses of lawful age and residents of said par-
41 ish, who have signed with the parties and me, clerk, *ex officio* recorder, and notary, after due reading of the whole.

(Original signed) A. G. MAXWELL.
LAURENT LACASSAGNE.

Witnesses:
H. B. LYONS.
R. P. O'BRYAN.
GEO. W. SUMMERS,
D'y Clerk and ex Officio Notary Public.

Recorded in vol. 1 of Conveyances No. 603, folio 739/741, Oct. 23rd, 1885.

GEO. W. SUMMERS,
D'y Clerk & Recorder.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in this office.

Given under my official signature and seal of office this 23rd day of October, A. D. 1885.

GEO. W. SUMMERS,
D'y Clerk and Recorder.

Cert. of Mortgage Annexed to Act of Sale.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify that the following mortgage appears of record in this office on the following-described property, to wit:

A certain tract of land lying and being situated in this parish, on the east side of the Bayou Vermilion, measuring ten arpents front by 40 arpents deep, bounded north by Miller, Lyons & Co., south by Emile Romero, east by —— ——, and west by the Bayou Vermilion, together with all the buildings, machineries, and improvements thereon situated.

42 1st. A legal mortgage in favor of the State of Louisiana and parish of Vermilion for taxes due on said land for the year 1885.

I further certify that there is no other mortgage of record and in force in this office.

Given under my official signature this 22nd day of October, A. D. 1885.

GEO. W. SUMMERS, *D'y Clerk.*

A true copy.
Attest:

GEO. W. SUMMERS,
D'y Clerk and Recorder.

Exhibit B. Filed April 15, -886.

J. B. BEATTIE, *D'y Clerk.*

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

26.

Record of suc. Jeanne C. Caré, wid. See page 99.

27.

Record of suit of L. Lacassagne *vs.* Francois Chapuis, test. ex't'r, U. S. circuit court. See page 109.

28.

Record of suit of H. Abraham and Son *vs.* F. Chapuis, 540, dist. court. See page 137.

29.

Burnt remnants of the record of the suc. of Clarke H. Remick. See page 194.

DOCUMENTS OFFERED IN EVIDENCE BY DEFENDANTS IN EXCEPTION.

30. "8."

Act of Mortgage from Mrs. M. Remick to A. G. Maxwell, with Cert. of Registry.

STATE OF LOUISIANA, }
Parish of Vermilion. }

43 Be it known that on this the 22nd day of August, A. D. 1883, before me, Lastie Broussard, clerk of the district court, *ex officio* notary public, duly commissioned and qualified, in and for the parish and State aforesaid, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mrs. Marceline C. Cavailhez, widow Clarke H. Remick, of lawful age and a resident of said parish, who declared and said that whereas on the 6th day of November, 1882, by act passed before the undersigned authority, and for the consideration therein mentioned, she had pledged unto Albert G. Maxwell, of said parish, "her claim against the estate of her late husband, Clarke H. Remick, incurred by her marriage with the said Clarke H. Remick and by the marriage contract of date of August 19th, 1869," said act of Nov. 6th, 1882, with the marriage contract aforesaid being specially referred to; and

Whereas since the date of said pledge, to wit, on the 13th day of March, 1883, she became the purchaser of the hereinafter-described property at the probate sale of the property of the succession of her said husband, Clarke H. Remick; and

Whereas she desires to more fully secure the said Albert G. Maxwell in the payment of the sum of three thousand four hundred and eighty-eight $\frac{50}{100}$ dollars, represented by two notes, one for eighteen hundred and thirty-nine dollars, payable on the 24th December, 1883, and the other for sixteen hundred and forty-nine $\frac{50}{100}$ dollars, payable on the 24th of December, 1884, and conditioned to draw eight per cent. per annum interest from maturity until paid, said note being fully described in and identified with said act of pledge of Nov. 6th, 1882, and without prejudice to said notes and the act of pledge with which they are identified, she does hereby affect, mortgage, and hypothecate in favor of the said Albert G.
44 Maxwell and inure to the benefit of any future holders of said notes the following-described property, to wit:

One certain tract of land lying and being situated in this parish, on the east side of the Bayou Vermilion, being the tract whereon

is situated her residence, measuring ten arpents front by forty arpents deep, bounded above by Miller, Lyons & Co., below by Frank R. King, east by lands supposed to be vacant, and west by Bayou Vermilion, with all the buildings, machineries situated thereon or appertaining thereto, said improvements being more fully and particularly described in the process verbal of sale of the property of the succession of her said deceased husband, Clarke H. Remick.

The said appearer dispenses with the production of the certificate required by article 3364 of the Revised Civil Code of the State, and agree to exonerate the notary from all liabilities in the premises.

Thus done and signed in presence of Messrs. John H. Remick and Gilbert Addison, competent witnesses of lawful age and residents of said parish, who have signed with the appearers and me, the undersigned notary, after due reading of the whole.

(Signed) MARCELINE C. REMICK.

Witnesses:
J. H. REMICK.
G. ADDISON.
LASTIE BROUSSARD,
Clerk, ex Officio Notary Public.

Filed for recordation Aug't 22nd, 1883, at 23 minutes after seven o'clock a. m.

(Sig.) LASTIE BROUSSARD,
Clerk & Recorder.

Recorded in Book F of Mortgages, page 772, No. 3153, Aug't 23rd, 1883.

ALCIDE LE BLANC,
D'y Clerk & Recorder.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I certify the above to be a true copy of the original on file and of record in this office.

45 GEO. W. SUMMERS,
D'y Clerk & Recorder.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify the above and foregoing to be duly recorded in vol. 1 of Mortgages, No. 84, page 111, May 19th, 1885.

GEO. W. SUMMERS,
D'y Clerk & Recorder.

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

31. "9."

Mortgage Notes.

$1,839.00. PARISH OF VERMILION, LA., *Nov. 6th*, 1882.

On the 24th day of December, 1883, I promise to pay to the order of Albert G. Maxwell the sum of eighteen hundred and thirty-nine

dollars, with interest, at the rate of eight per cent. per annum, from maturity until paid, for value received.

MARCELINE C. CAVAILHEZ.

[Written across the face:] "*Ne varietur.*" Parish of Vermilion, Nov. 6th, 1882. Lastie Broussard, clerk, *ex officio* notary public.

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

32. "10."

$1,649.50. PARISH OF VERMILION, LA., *Nov. 6th*, 1882.

On the 24th day of December, 1884, I promise to pay to the order of Albert G. Maxwell the sum of sixteen hundred and forty-nine $\frac{50}{100}$ dollars, with interest, at the rate of eight per cent. per annum, from maturity until paid, for value received.

MARCELINE C. CAVAILHEZ.

[Written across the face:] "*Ne varietur.*" Parish of Vermilion, Nov. 6th, 1882. Lastie Broussard, clerk & *ex officio* notary public.

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

33. "11."

46 *Petition and Order for Seizure in Suit of A. G. Maxwell vs. Mrs. C. Cavailhez, Widow.*

To the hon. the judge of the 25th judicial district court in and for the parish of Vermilion, State of Louisiana:

The petition of Albert G. Maxwell, a resident of Vermilion parish, State of Louisiana, with respect shows:

That Mrs. Marceline C. Cavailhez, widow of Clark H. Remick, deceased, a resident of said parish and State, is justly and truly indebted unto him in the full sum of three thousand four hundred and eighty-eight dollars and fifty cents ($3,488.50), with eight per cent. per annum interest on the sum of one thousand eight hundred and thirty-nine dollars thereof from the 24th day of December, A. D. 1883, until payment, and the like rate of interest on the sum of one thousand six hundred and forty-nine $\frac{50}{100}$ dollars from December 24th, A. D. 1884, until payment. The two notes evidencing said indebtedness, together with a certified copy of pledge granted by her in favor of petitioner on the 6th day of November, A. D. 1882, and with which act of pledge said notes are identified, are herewith filed and made part hereof.

Petitioner further shows that on the 22d day of August, A. D. 1883, the said Marceline C. Cavailhez, widow, aforesaid, in order to more fully secure the payment of said notes, did, by public act before Lastie Broussard, Esq., clerk of the district court for Vermilion parish & *ex officio* notary public, affect, mortgage, hypothecate, and

encumber in favor of your petitioner the following-described property, to wit, "one certain tract of land lying and being situated in this parish on the east side of the Bayou Vermilion, being the tract whereon is situated her residence, measuring ten arpents front by forty arpents deep, bounded above by Miller, Lyons & Co., below by Frank R. King, east by lands supposed to be vacant, and west by the Bayou Vermilion, with all the buildings, machineries,
47 situated thereon or appertaining thereto, said improvements being more fully and particularly described in the process verbal of sale of the property of the suc. of her dec'd husband, Clarke H. Remick," a certified copy of which process verbal is herewith filed for reference. A certified copy of the said act of mortgage of dates of 22d of Aug., A. D. 1883, and which declares that the notes to be secured thereby are identified with the act of pledge of November, A. D. 1882, is herewith filed and made part and parcel hereof.

Petitioner further shows that said act of mortgage imports a confession of judgment, and that he is entitled to have the said property seized and sold to satisfy his said demands.

He further shows that said notes are long since past due, and notwithstanding repeated amicable demand said notes remain unpaid, wholly and entirely.

The premises considered, petitioner prays that the sheriff of the parish of Vermilion be authorized and ordered to seize and take into his possession and sell the property mentioned and described in the said act of mortgage here filed, and together with all the improvements thereon situated or thereto appertaining, and that the proceeds thereof be applied to the settlement of his demands, and that his mortgage for the sum of one thousand eight hundred and thirty-nine dollars, with eight per cent. per annum interest from the 24th day of December, A. D. 1883, and for the further sum of one thousand six hundred and forty-nine dollars and fifty cents, with eight per cent. per annum interest from the 24th day of December, A. D. 1884, until paid, as well as for the costs incurred in these proceedings, be recognized and enforced; and he prays for general relief, &c., &c.

O'BRYAN & WHITE,
Att'ys for Pet.

48 Considering foregoing application and annexed copy of act of mortgage & notes—

It is ordered that a writ of seizure and sale do issue as prayed for, after the expiration of delays and giving of notices required by law.

Granted at chambers, at Lafayette, La., this 21st May, A. D. 1885.

C. DEBAILLON,
Judge 25th Jud'l Dist., La.

Filed May 25th, 1885.

LASTIE BROUSSARD, *Clerk.*

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

5—301

34. "12."

Sheriff's deed to Maxwell and Lacassagne. See No. 24, page 50.

35. "13."

Sale from Maxwell to Lacassagne. See No. 25, page 53.

36.

Revised Statute of the U. S. See printed volume.

37.

Note of Evidence.

District Court, Vermilion Parish.

L. LACASSAGNE
vs.
FRANCOIS CHAPUIS. } No. 570.

Note of evidence on trial of exception.

Evidence of plaintiff in exception.

49 Bill in chancery in case of Jeanne Caroline Caré, widow, *vs.* Marceline Cavailhez *et al.*, No. 33, U. S. circuit court, together with two authentic acts bearing dates of 19th August, 1869, one act being a transfer by Bapte. Cavailhez and Ernestine Diaz to Clarke H. Remick and the other being the marriage contract between Clarke H. Remick and Marceline Cavailhez—

Baptiste Cavailhez and Ernestine Diaz appearing in said act, marked 1, 2, & 3.

Objected to on the ground that it is *res inter alios acta*, and that Lacassagne is a 3rd party and is not affected by these pleadings, and that same are not properly certified to either in proper form, as required by act of Congress, or by the proper officer, and on the further ground that said documents have nothing to show that they are copies of the originals.

Which objection was overruled by the court and allowed the evidence to go in and placed same to the effect.

To which ruling counsel excepted, reserved the point, and tenders this in lieu of a bill.

Citation issued from the U. S. circuit court in same bill of chancery offered above, marked 3 "C."

Same objection, same ruling, same exception, and same bill.

Answer filed by defendant in case of Jeanne Caroline Caré *et al. vs.* Marceline Cavailhez, widow, *et al.*, filed Oct. 27, '84, marked "4."

Judgment rendered in case No. 33, U. S. circuit court, marked "5."

Objected to on the grounds urged in documents 1, 2, & 3; same ruling and same bill.

Writ of possession and return of the marshal thereon in
50 above-entitled case, marked "6."

Same objection, same ruling, and same bill of exception.

For the purpose of proving the date only when plaintiff, L. Lacassagne, purchased the property in question, and to show that he acquired after the filing of the aforesaid bill in chancery and during the pendency of said act of revendication, I now offer in evidence the sh'ff's deed to Maxwell and Lacassagne of 15th August, 1885, and the subsequent sale by A. G. Maxwell to Laurent Lacassagne of 22nd Oct., 1885, both marked Nos. 139, Exhibit-"A & B."

Record of succession of Jeanne C. Caré, widow, — Bte. Cavailhez, No. 17091 of civil dist. court, p'h Orleans, more particularly the last will, the inventory, and other mortuary proceedings of said estate, marked "7."

Objected to on the ground that it is irrelevant and on the grounds urged to documents marked A & B.

Same ruling and same bill of exception.

Record of suit of Laurent Lacassagne *vs.* Francois Chapuis, test. ext'r of Jeanne Caroline Caré Cavailhez, dec'd, including 1st bill of complaint, page 1, printed document; citation, page 5; demurrer of defendant, page 6; plea of jurisdiction, page 7; writ of possession, pages 8 and 9, and judgment in matter of Jeanne Caroline Caré, widow, *vs.* Marceline Cavailhez *et als.*, page 9, being the same judgment already offered in manuscript; also marshal's return on writ of possession, page 10; also voucher or exhibits annexed to said Lacassagne's bill in chancery or injunction, page 11; also vouchers or exhibits, pages 14, 15, 16, 17, & 18.

The decree on the application for injunction, page 19, and the judgment sustaining the demurrer, on same page.

51 Objected to on the ground that the cert. does not cover the various documents introduced in this pamphlet; that no one certificate, even if full, could cover a number of documents in book form gotten out by a printer, and that the said cert. does not carry with it the verity of any of said documents.

Same objection, same ruling, and same bill.

The record of case No. 13234 is to go in the record, in case of an appeal, in the same form as introduced, subject to the objection of pl'ff's counsel noted above.

Suit entitled H. Abraham & Son *vs.* Francois Chapuis, No. 540 of this court, offered.

Evidence of pl'ffs in exception closed.

Defendant in Exception's Evidence.

Certified copy of act of mortgage from Mrs. Marceline Cavailhez to Albert G. Maxwell, of date of August 22d, 1883, passed before Lastie Broussard, clerk of court & *ex officio* notary, with cert. of recordation by Alcide Ee Blanc, in Book F of Mortgages, page 77223, Aug., 1883, marked "8."

Objected to on the ground of *res inter alias acta;* which objection

is overruled on the ground that the objection goes to the effect; to which ruling pl'ffs in exception reserves this their bill of exception.

Two notes, both dated Nov. 6th, 1882, one for the sum of $1,839.00, the other for the sum of $1,649.50, payable respectively on the 24th Dec., 1883 & 1884, to the order of Albert G. Maxwell, with 8% per annum interest from maturity, and signed by Marceline
52 Cavailhez, marked "9 and 10."

Petition for seizure and order, signed by C. Debaillon, judge, on 21st May, 1885, marked 11; and sheriff's deed under this order to Albert G. Maxwell, and sale from him to L. Lacassagne, for which refer to plaintiff's evidence, marked 12 & 13.

LASTIE BROUSSARD, sworn, says:

I was acquainted with Jean Bte. Cavailhez, who lived in this parish and who owned the plantation in dispute, and I think he died in 1881, and perhaps earlier. I know that he was naturalized.

Pl'ffs objects to any evidence, oral or otherwise, taken upon the citizenship, because this matter cannot be tested collaterally in order to attack the judg't and jurisdiction of the U. S. circuit court in the matter of Jeanne Caroline Caré *et als. vs.* Marceline Cavailhez *et als.*; that a judgment of the court cannot be attacked for fraud except by direct action and by proceedings instituted in the court that rendered said judg't.

The court reserves under advisement to pass upon this objection, and, should the same be sustained, then the court will order the testimony to be stricken out.

Evidence of L. BROUSSARD resumed:

The record of the naturalization of Jean Bte. Cavailhez was burned at the burning of the court-house of this parish in 1885.

He was naturalized before the dist. court of this parish, I think, about the year 1866, and I was clerk of court at that time.

I think, but am not positive, that I saw his naturalization papers, and I think that I gave him copies of same.

He voted, after he was naturalized, in my presence. I saw
53 him vote.

Mrs. Remick lived on the plantation in this parish.

The estate of J. B. Cavailhez is opened and Mr. A. Moulon was appointed adm'r of same.

MANUEL DELANO, sworn, says:

I was acquainted with Jean Bte. Cavailhez, the supposed husband of Jeanne Caroline Caré. He lived in this parish and died, I think, in 1881 or 1882, the 13th April.

For ten years prior to his death he lived in this parish. He was born in France, I supposed.

I have seen the naturalization papers of Mr. Cavailhez. He told me that they were his naturalization papers and I saw them. I saw, besides this, a permit from Gen'l Smith allowing him to run the

blockade, and in which permit his naturalization papers were mentioned. The way the permit read was that he was duly naturalized.
J. B. Cavailhez was a naturalized citizen of the United States and he voted as such.

Revised Statutes of the U. States. By agreement the printed volume to be used.

Evidence of def'd't- in exception closed.

It is admitted that the estate of J. B. Cavailhez was not made a party to these proceedings.
Burnt record of succession of Clarke H. Remick offered.

I hereby certify that the above and foregoing is all the evidence adduced on trial of the above exception this 15th day of Dec., 1893, and filed on same date.

GEO. W. SUMMERS,
D'y Clerk Dist. Court.

54 38.

Ext. Minutes of Court.

FRIDAY, *Dec. 15th*, 1893.

Court met pursuant to adjournment.
Present: His honor A. C. Allen, judge, presiding.

L. LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } 570.

Exception tried, argued, and submitted, and held under advisement.

* * * * * * *

Court then adjourned to tomorrow, at 9 o'clock a. m.

39.

Reasons for Judgment.

17th Jud'l Dist. Court, Parish of Vermilion.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } No. 570.

The plaintiff herein alleges that he is the owner of a certain plantation situated in the parish of Vermilion and fully described in his petition.
He avers that he acquired the ownership of said property with Albert G. Maxwell in judicial proceedings executed in the district court of the parish of Vermilion in the suit of Albert G.
55 Maxwell *vs.* Marceline Cavailhez, No. 6 of the docket, signed by Joseph S. Nunez, sheriff, and dated August 5th, 1885. He

avers further that he acquired the interest of said Maxwell in said property by an act of sale on the 22nd day of October, A. D. 1885.

He represents that under an order issued from this court in suit of H. Abraham & Son *vs.* Francois Chapuis the sheriff of the parish of Vermilion has seized and advertised for sale his said property.

He avers that neither of the parties to said suit has any interest in and to petitioner's property so seized; that especially is defendant Chapuis without said interest or right of ownership in his property; that it is not liable for any of his debts or for any created by him as bearing upon the said property; that the proposed sale of petitioner's property for the debt of another is illegal, oppressive, and unjust, and that it will work irreparable injury to him.

He asks for one thousand dollars damages for the illegal seizure of his property.

Before answering to the merits of the action, defendant Francois Chapuis filed the following exception-:

1st. That Laurent Lacassague is estopped and his demand is barred by the suit and judgment in the matter of Jeanne Caroline Care, widow, etc., *vs.* Marceline Cavailliez, widow, No. — of the 5th U. S. circuit court, western district of Louisiana, in chancery, in which suit final judgment was rendered in favor of the oratrix, as widow in community of the said Jean Baptiste Cavailliez, against said Marceline Cavailliez and the estate of Clarke H. Remick, deceased.

2nd. That said suit was filed, the defendants cited, and the caveat issued before the pretended title of Lacassague originated, he now claiming from said Marceline Cavailliez and the estate of her deceased husband, Remick.

3rd. That said judgment recognized Jeaune C. Care as the
56 lawful wife and widow of said J. B. Cavailliez, and that Ernestine Diaz, the mother of Marceline Cavailliez, never was the wife of said J. B. Cavailliez, nor could have contracted marriage with him, as he was previously married to J. C. Care and had a living wife, a fact which she well knew at the time.

4th. That said judgment declares null and void the act of donation and dowry from J. B. Cavailliez to Marceline Cavailliez, of Aug. 19th, 1869; also act of sale of 19th August, 1869, by Baptiste Cavailliez and Ernestine Diaz to Clarke H. Remick of the plantation now in suit.

5th. That said judgment decrees the said plantation to belong to the community heretofore existing between J. B. Cavailliez and his widow, Jean C. Care, and recognizes her claim against said community for the sum of $5,310.10, with legal interest from the 25th of February, 1884, and with legal mortgage to secure said claim.

6th. That the vaguely set forth and pretended title of L. Lacassague was acquired, if at all, long after the institution of and pending — said suit in chancery, a fact which he well knew at the time, and he in concluded by the final judgment rendered in the premises.

7th. That respondent is residuary legatee by universal title of Jeaune C. Care by her will, duly homologated by the civil district

court for the parish of Orleans, and he is therefore entitled to avail himself of said plea.

This plea was filed June 6th, 1893, on the same day H. Abraham & Son pled the same defense to the action of plaintiff.

Francois Chapuis, in his capacity as testamentary executor of the succession of Mrs. Jeaune C. Care, deceased, filed an intervention in which he urges the same defence against plaintiff's action as urged by him in his individual capacity.

Francois Chapuis died on the — day of ——, A. D. 1893. His succession was duly opened on the 21st day of September, 1893.

Jake H. Abraham, administrator of the succession of Fran-
57 cois Chapuis, appeared into court and adopted as his the exception filed herein by H. Abraham & Son, and on the same day J. B. Vinet, public administrator and dative testamentary executor of the succession of Jeaune Care, adopts the same defence made by his predecessor.

On September 21st, 1893, Laurent Lacassagne filed a supplemental petition, in which he set out more clearly his title to the land in controversy and attacked the judgment rendered by U. S. circuit court as an absolute nullity, on several grounds, but mainly because the plaintiff therein practiced a fraud on said court by alleging that she was a citizen of the Republic of France, when in truth and in fact she was a citizen of Louisiana, and that this allegation alone caused said court to take jurisdiction of the case.

The property in controversy was seized in the State court in suit of A. G. Maxwell *vs.* —— —— and was sold pending the suit in the United States circuit court for the revendication of the property.

The judgment in the last-named court was in favor of the plaintiff and the pretended transfers of the property were annulled.

This judgment and the proceedings leading up to it are regular in form and was rendered by a court, after due citation and hearing, of competent jurisdiction. That judgment has became final, and the plaintiff in that action was regularly put in possession of the property, and her heirs and assigns have possession of it now.

Article 2452 of the Civil Code declares that the sale of a thing belonging to another person is null. It may give rise to damages when the buyer knew that the thing belonged to another person.

Article 2453 of the Civil Code provides that the thing claimed as the property of the claimant cannot be alienated pending the action so as to prejudice his right. If judgment be rendered for him, the sale is considered as a sale of another's property, and does not

prevent him from being put in possession by virtue of said
58 judgment.

Act No. 3 of the acts of the General Assembly of the year 1878 extends the prohibition further and says: Nor shall it be lawful for debtors or third possessions of property subject to a mortgage of any kind to transfer or alienate such property pending such action to enforce the mortgage. Any transfer shall have no effect against the plaintiff.

This law, therefore, establishes beyond question the principle that the sale of a thing belonging to another persons is null.

It *is* also establishes that the sale of property claimed by another pending the action for the claimant is stricken with the same nullity as is the sale of another's property.

It further establishes that when property is subject to a mortgage of any kind, the alienation of that property pending an action to enforce a mortgage can have no effect against the plaintiff.

Apply these absolute principles of the law to the facts of this case and the conclusion is irresistible in favor of the plea of estoppel a-d *res adjudicata* filed herein, provided the judgment rendered by the United States circuit court in favor of Jeaune C. Care is conclusive and cannot be attacked.

The general rule is that the State courts cannot revise the judgments of the United States courts collaterally, and when such judgments are set up as the basis of title between persons litigating in the State courts, the latter tribunals can inquire into their judgments only in so far as to ascertain whether the proceedings leading up to the judgment are regular, and this inquiry must be restricted to the face of the papers themselves.

The averments made in the pleadings cannot be controverted by proof. An application of this rule to this case would exclude the testimony tendered by plaintiff herein to show that Mrs. Care's allegation of citizenship made in her suit before the U. S. court was not true. I am referred, however, to a decision in the 39 59 Ann., page 8, where the supreme court of this State advanced a different doctrine, and their opinion is based on a judgment of the U. S. Supreme Court found in 18 Wallace, page 457. In that case the court says: "That the record of a judgment rendered in another State may be contradicted as to the facts necessary to give the court jurisdiction, and if it be shown that such facts did not exist the record will be a nullity, notwithstanding it may recite that they did exist.

Want of jurisdiction may be shown either as to the subject-matter or the person or in proceedings *in rem* as to the thing."

The law therefore permits the testimony, and it is therefore admitted. I will therefore consider its effect.

The burden of showing this fact is on the plaintiff, and it must be shown clearly. He contends that Cavailliez was a naturalized citizen of the United States, and that, as Jeaune C. Care was his wife, his domicile was her domicile.

He proposes to prove this by Lastie Broussard, who swears that he was clerk of court in and for the parish of Vermilion in the year 1866. He says, further, "He was naturalized by the district court of this parish, I think, about the year 1866. I think, but I cannot — positive, that I saw his naturalization papers. I think I gave him copies of them. He voted, after he was naturalized, in my presence; I saw him vote." Mr. Broussard is not positive in his testimony; he merely thinks that he was naturalized. His positive statement, were it in the record, would be conclusive of the matter, for I know him to be both careful and truthful. He is positive, however, that he voted. I know no one should vote but a citizen, but I am loth to overturn a solemn decree of a competent court

simply because a man voted in this State during the era during which Cavailliez resided here.

Delano's testimony is no more convincing. He says: "I
60 saw his naturalization papers. He told me that they were his papers, and I saw, besides, a passport from General Smith allowing him to run the blockade, which document read that Cavailliez was duly naturalized."

If this witness' statement be true, Cavailliez was naturalized during the late war or before, and not in 1866, as Mr. Broussard thinks. I heard this witness testify. I know that he was not sure in his statement, and from his intimate relations with Cavailliez, if any could be sure on this point, he should be.

I do not think that this evidence is convincing enough to warrant this court in striking with nullity the judgment in favor of Mrs. Care rendered by the U. S. circuit court.

In the exception defendants aver that all those matters complained of were known to plaintiff at the time of the institution of the suit before the United States circuit court, and they argue that during their pendency there he designedly went into the State court to evade these very issues. The law says, "Matters in existence and known to plaintiff when the judgment was rendered is no ground for nullity."

Cavailliez deserted his wife when a citizen of France. He illegally married another woman in this State. His citizenship here, if he had any, commenced after this illegal marriage. This is shown by the fact that the issue of this marriage was a married woman in the year 1869.

The abandoned wife, coming from the country of her nativity, appealed to the Federal court for her just rights, and they were awarded to her by a judgment of the court after a full hearing; that judgment I decline to annul in a proceeding like this.

For these reasons I think the exceptions should be sustained, and it is so adjudged.

Rendered in open court this 14th day of March, 1894.

61 A. C. ALLEN, *Judge.*

Filed March 14th, 1894.

GEO. W. SUMMERS,
Deputy Clerk.

40.

Extract from Minutes of Court.

WEDNESDAY, *March 14th*, 1894.

Court met pursuant to adjournment.
Present: His honor A. C. Allen, judge, presiding.

L. LACCASSAGUE
vs.
H. ABRAHAM & SON ET AL.

Written reasons for judgment filed.

Judgment sustaining the exception of *res judicata* and estoppel. See decree.

Court then adjourned to tomorrow, at 9 o'clock a. m.

41.

Motion for a New Trial.

17th Jud. Dist. Court, State of La., Parish of Vermilion.

L. CASSAGUE
vs.
H. ABRAHAM & SON ET AL. } No. 570.

Now into court, through undersigned counsel, comes Laurent Lacassague, plaintiff in the above numbered and entitled cause, who respectfully represents that the judgment of this hon. court
62 sustaining the exception of *res judicata* and estoppel filed by defendants herein aggrieves him, because the same is contrary to the law and the evidence, the evidence as it appears on record and as accepted by the court being different from the evidence actually given on the trial of the exception aforesaid, for the chief witness for plaintiff herein swore positively that he had seen the naturalization papers—the originals—of J. B. Cavailliez and was familiar with their contents, which positive and unequivocal testimony was written down, unknown to said witness and to plaintiff, incorrectly by the clerk of court, so that it seems from the record that the said witness, Lastie Broussard, did not swear positively to having seen the naturalization papers of J. B. Cavailliez. Appearer avers that the testimony of said Broussard will correct this error of the clerk of court and will show beyond doubt that J. B. Cavailliez was naturalized, and that it is through no fault of appearer that the said testimony was erroneously reported.

Wherefore, the annexed affidavit of Lastie Broussard and the premises being considered, appearer moves that this case be reopened and a new trial granted him, otherwise an irreparable injury will be done him in his just right of having the evidence adduced by him in court to go into the record as it was given.

He further moves that the parties to this suit, H. Abraham & Son and the administrator of the estate of F. Chapuis and J. C. Cavailliez, be duly notified of this motion, as required by law.

Appearer prays for general relief.

D. CAFFREY & SON, *Att'ys.*

Before me, the undersigned authority, personally came and appeared Lastie Broussard, who is well known to me, who, being sworn, deposes and says that in the trial of the exception of *res*

judicata and estoppel in the suit of L. Cassague *vs.* H. Abraham & Son *et als.*, No. 570 of the docket of the district court of Ver-
63 milion parish, he testified before the court on Dec. 15th, 1893, that he had seen and read the naturalization papers of J. B. Cavailliez, which was in the shape of a judgment of the district court of Vermilion parish, and remembered the substance of their contents; that he swore point blank that the said documents making Cavailliez a citizen of the United States had been in existence and had been burned; that, much to his surprise, he now understands that his testimony as written down by the deputy clerk of court, G. W. Summers, is not positive on these points, and that if it is of record that he is not certain of these facts, then his testimony has been erroneously written; and, finally, that he should not be reported as having said that he thinks the naturalization papers existed, as he testified unequivocally that the papers did exist.

LASTIE BROUSSARD.

Sworn to and subscribed before me this 31st day of March, 1894.

L. O. BROUSSARD,
Notary Public.

Filed March 31st, 1894.

GEO. W. SUMMERS,
Deputy Clerk.

42.

Extract Minutes Court.

SATURDAY, *March 31st*, 1894.

Court met pursuant to adjournment.
Present: His honor A. C. Allen, judge, presiding.

L. LACASSAGUE
vs.
H. ABRAHAM & SON ET ALS.

Motion for a new trial filed and fixed for Monday, 2nd proximo, without prejudice.

Court then adjourned to Monday, 2nd April, 1894, at 9 o'clock a. m.

64 43.

Extract Minutes Court.

THURSDAY, *April 5th*, 1894.

Court met pursuant to adjournment.
Present: His honor A. C. Allen, judge, presiding.

L. LACASSAGUE
vs.
H. ABRAHAM & SON ET AL.

By consent, trial of motion for new trial reassigned for tomorrow.

Court then adjourned to tomorrow, at 9 o'clock a. m.

44.

FRIDAY, *April 6th*, 1894.

Court met pursuant to adjournment.
Present: His honor A. C. Allen, judge, presiding.

L. LACASSAGUE
vs.
H. ABRAHAM & SON ET ALS.

Motion for a new trial tried and overruled.
Court then adjourned to tomorrow, at 9 o'clock a. m.

45.

Bill of Exceptions.

Be it known that on the trial of this cause plaintiff, Laurent Lacassague, offered testimony of Lastie Broussard and of other witnesses for the purpose of impugning and attacking the judgment of the circuit court of the United States, at Opelousas, rendred in matter of widow J. B. Cavailliez *vs.* Marceline Cavailliez, 65 widow Remick, *et al.*, which judgment is set up as *res judiciata* in the premises; that counsel for defendants Abraham & Co. and suc. of wid. J. B. Caivaillez, represented by the public adm'r of the parish of Orleans, and Jake Abraham, adm'r, objected to admissibility of said evidence on the grounds that said judgment could not be assailed and attacked collater-ly, but could be so assailed only by direct action in the premises.

But said objection was overruled and said testimony was admitted in evidence.

To which ruling said intervenors and defendants reserved this their bill of exception, which, after being submitted to the counsel on the other side, was after reading signed in open court this 7th day of March, 1894.

By the COURT: I have given my reasons for admitting the evidence in my reasons for judgments. I refer to them.

A. C. ALLEN, *Judge.*

Filed April 7th, 1894.

ALCIDE LE BLANC, *Clerk.*

46.

Bill of Exception.

17th Jud. District Court, Parish of Vermilion, State of Louisiana.

L. LACASSAGUE
vs.
H. ABRAHAM & SON ET ALS. } No. 570.

Be it remembered that in the above numbered and entitled cause a motion for a new trial of the exception of estoppel and *res adjudicata* having been made on the ground that the testimony of Lastie

Broussard, a witness for plaintiff herein, was reduced to writ-
66 ing incorrectly by the deputy clerk of court, so that while the said witness swore positively and point blank that he had seen and read the judgment of the district court of Vermilion parish naturalizing J. Baptiste Cavailliez and making him a citizen of the United States, and was familiar with the contents, in substance, of the said judgment, and stated the substance of the said contents, the testimony of the said witness, as written by the said clerk, is vague, hesitating, and uncertain, all of which will be shown more fully by the testimony of the said witness as it appears in the note of evidence taken on the trial of the said exception and by the affidavit of the said witness stating what he did testify to, the said note of evidence and the said affidavit being attached hereto and made part hereof, marked "A" and "B."

This error being on a matter material and vital to the issue, plaintiff based his motion for a new trial on the ground that the judgment against him on the aforesaid exception was contrary to the law and the evidence.

The district judge having overruled the said motion for a new trial, plaintiff herein duly excepted to the said ruling, and presents this formal exception to the court for signature before final judgment was signed, the same having been first submitted to opposing counsel and by them found correct.

Done and signed in open court, at Abbeville, La., this 7th day of April, 1894.

A. C. ALLEN, *Judge.*

Filed April 7th, 1894.

G. W. SUMMERS,
Deputy Clerk.

67 47.

Judgment.

17th Jud'l Dist. Court, Parish of Vermilion.

L. LACASSAGUE
vs.
H. ABRAHAM & SON ET ALS. } No. 570.

On the trial of the exception of *res judicata* and estoppel filed herein by the defendants.

In this case, by reason of the law and the evidence being in favor of the exceptors herein, it is therefore ordered, adjudged, and decreed that the exception of *res judicata* and estoppel filed herein by the defendants be, and the same is hereby, maintained. It is further ordered, adjudged, and decreed that plaintiff's demand be, and the same is hereby, rejected and his suit dismissed at his costs.

It is further ordered, adjudged, and decreed that the injunction herein sued out and issued be, and the same is hereby, dissolved.

Thus done, read, and signed in open court at Abbeville, La., this 7th day of April, A. D. 1894.

(Signed) A. C. ALLEN,
Judge, 17th Jud. Dist., La.

Filed April 7th, 1894.

G. W. SUMMERS, *D'y Cl'rk.*

48.

Petition and Order of Appeal.

17th Jud. Dist. Court, Parish of Vermilion, State of La.

LAURENT LACASSAGUE
vs.
H. ABRAHAM & SONS ET ALS. } No. 570.

To the Hon. A. C. Allen, judge of the 17th jud. district court of the State of Louisiana in and for the parish of Vermilion:

The petition of Laurent Lacassague, plaintiff in the above entitled and numbered cause, respectfully shows:

68 That on April 7th, 1894, judgment was granted and signed by this court in the above cause sustaining the exception of *res judicata* and estoppel filed by the defendants therein and finally dismissing plaintiff's suit, which judgment aggrieved him and causes him irreparable harm.

That he desires to obtain a devolutive appeal from said judgment, returnable to the supreme court of Louisiana according to law.

Wherefore petitioner prays that a devolutive appeal be granted him from the judgment rendered herein, sustaining defendants' pleas of *res judicata* and estoppel and dismissing his suit, to the supreme court of Louisiana, according to law, and that the bond for such appeal be fixed.

Petitioner further prays for all due service and citation upon the defendants and appellees interested herein, and for all general and equitable relief.

D. CAFFREY & SON, *Att'ys.*

Order.

The prayer of the foregoing petition and the premises considered, it is hereby ordered that an appeal be granted from the judgment rendered in this cause, returnable to the supreme court of Louisiana, according to law, and there not being sufficient time between this date and the 2nd Monday in April for citation of the appellees, the return day is fixed on the second Monday of November, 1895.

Let the appeal bond be fixed at three hundred dollars.

Let the defendants and appellees be cited.

Done and signed in chambers, at Franklin, La., this 25th day of March, 1895.

69 A. C. ALLEN,
Judge 17th Judicial District Court.

Filed March 25th, 1895.

ALCIDE LE BLANC,
Clerk of Court.

49.

STATE OF LOUISIANA:

17th Jud. Dist. Court, Parish of Vermilion.

L. LACASSAGUE
vs.
H. ABRAHAM & SON ET ALS. } No. 570.

Know all men by these presents that we, Laurent Lacassague, as principal, and J. M. Beauxis, residing in the parish aforesaid, as surety, are held and firmly bound unto A. Le Blanc, clerk of said court, in the sum of three hundred dollars; for the payment whereof, well and truly to be made, we bind ourselves *in solido.*

Subscribed and stated at Abbeville, La., this 25th day of March, 1895.

Now, the condition of the foregoing obligation is such that whereas the said principal herein has obtained an order for a devolutive appeal from the judgment rendered by said district court on the seventh day of April, 1895, to the honorable the supreme court of the State of Louisiana, returnable according to law: now this bond is given as surety that said principal as appellant shall prosecute the said appeal, and that he shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in said appeal, and that he will pay the costs of this appeal (costs of this and the appellate court); otherwise that the said Beauxis, surety, shall be liable in his place.

LAURENT LACASSAGUE.
70 J. M. BEAUXIS.

Jean M. Beauxis, surety, sworn, says that, over and above all his debts and legal exemptions, he is worth in property liable to execution the full amount of said bond.

J. M. BEAUXIS.

Sworn to and subscribed before me, Alcide Le Blanc, clerk of court, this 25th day of March, 1895.

ALCIDE LE BLANC,
Clerk Dist. Court.

Index.

Succession of JEAUNE C. CARE. No. 17091.

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Mortuary Proceedings of the Estate of Jeanne C. Care, # 17091, Civil Dist. Court, Offered in Evidence by Plaintiffs in Exception, "7."

A.

Petition.

STATE OF LOUISIANA:

Civil District Court, Parish of Orleans.

Succession JEANNE C. CARE, Wid. Baptiste Cavailliez. No. 17091. Div. "E."

71 *Petition. Filed March 8th*, 1886.

To the hon. civil district court for the parish of Orleans:

The petition of F. Chapuis, of New Orleans, respectfully represents:

That Wid. Jeanne Caroline Cavailliez, born Care, a resident of the city of New Orleans, has departed this life in said city on the 6th day of March, 1886, leaving no ascendants nor descendants nor any collateral heirs within the limits of the jurisdiction of this hon. court.

That she has left a mystic will, contained in the annexed package, and petitioner, who is appointed in said instrument as testamentary executor, with seizen, desires to have said will probated.

Wherefore petitioner prays that said package be opened in court, said will proven and homologated, and your petitioner appointed testamentary executor with seizen of estate, without furnishing bond and security; prays for general relief, and as in duty bound, &c.

ALBERT VOORHIES.

LEONARD, MARKS AND BRUEN.

B.

Order.

Let the last will and testament of the deceased be proved before me forthwith.

New Orleans, March 10th, 1886.

HENRY L. LAZARUS, *Judge.*

C.

Order.

The last will and testament of the deceased having been duly proved before me, let Francois Chapuis be thereunder confirmed as testamentary executor with seizen of her estate and without
72 bond, and let letters issue to him as such upon his taking the oath according to law.

New Orleans, March 10th, 1886.

HENRY L. LAZARUS, *Judge.*

D.

Oath of Testamentary Executor.

Filed M'ch 10th, 1886.

STATE OF LOUISIANA:

Civil District Court, Parish of Orleans.

Succession JEANNE C. CARE, Wid. Baptiste Cavailliez. No. 17091. Div. "E."

Before me, Jules Vienne, deputy clerk for the civil district court for the parish of Orleans, personally came and appeared Francois Chapuis, who solemnly swears that he will weil and faithfully perform all and singular the duties of testamentary executor of the last will and testament of Jeanne C. Care, wid. of Baptiste Cavailliez:

So help me God.

F. CHAPUIS.

Sworn to and subscribed before me, New Orleans, March 10th, 1886.

JULES VIENNE,
Deputy Clerk.

E.

Letters Testamentary.

Filed March 11th, 1886.

STATE OF LOUISIANA:

Civil District Court, Parish of Orleans.

Succession of JEANNE C. CARE, Wid. Baptiste Cavailliez. No. 17091. Div. "E."

To all whom these presents may come, Greeting:

73 Whereas Francois Chapuis, named and appointed testamentary executor of the last will and testament of Mrs. Jeanne C. Care, wid. Baptiste Cavailliez, dec'd, has applied to the civil district court for the parish of Orleans by petition praying said court to grant letters testamentary therein:

Now know ye that the said Francois Chappuis is hereby authorized and impowered to collect all the goods and effects which were of said Mrs. Jeanne C. Care, wid. Baptiste Cavailliez, dec'd, and to make a just inventory thereof, and all other lawful acts to do and perform as testamentary executor of the said last will and testament.

Witness our hand and the seal of our said court, at the city of New Orleans, this 11th day of March, in the year of our Lord one

thousand eight hundred and eighty-six, and the one hundred and tenth of the Independence of the United States of America.

HENRY L. LAZARUS, *Judge.*

JULES VIENNE,
Deputy Clerk.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Civil District Court for the Parish of Orleans.

I, W. J. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing five pages do contain true and correct copies of petition, orders, oath, and letters testamentary in the succession of Jeaune C. Care, wid. Baptiste Cavailliez, and numbered 17091 of the docket of this court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this second day of July, in the year of our Lord one thousand eight hundred and eighty-six, and in the 110th year of the Independence of the United States of America.

[SEAL.] W. J. McGEEHAN, *Clerk.*

74 I, A. L. Tissot, presiding judge of the said district court for the parish *for the parish* of Orleans, do hereby certify that W. J. McGeehan is the clerk of said court; that the same is a court of record having probate jurisdiction; that the signature, W. J. McGeehan, clerk, to the foregoing certificate is in the proper handwriting of him, the said W. J. McGeehan, clerk; to his official acts as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the second day of July, in the year of our Lord 1886.

A. L. TISSOT, *Judge.*

I, W. J. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that A. L. Tissot, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same presiding judge of the civil district court for the parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said court this second day of July, 1886.

[SEAL.] W. J. McGEEHAN, *Clerk.*

Filed Dec. 15, '93.

G. W. SUMMERS,
Deputy Clerk.

F.

Inventory of the Estate of Jeaune C. Care.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Succession of JEAUNE CAROLINE CAVAILLIEZ. No. 17091.

Be it known that on this the 23rd day of December, A. D. one thousand eight hundred and ninety-two, by virtue of a commission issued from the civil district court for the parish of Orleans, division "E," in the parish matter of the succession of Jeaune C. Care, widow Baptiste Cavailliez, being No. 17091, and to me directed, authorizing and empowering me to take and make an inventory and appraisement of all the property, movable as well as immovable, belonging to said succession situated in the parish of Vermilion, I, Lastie Broussard, a notary public, duly commissioned and qualified, in and for said parish of Vermilion, have appointed Mess. Elie Montague, Jr., and Numa Frederick, of said parish, experts, to appraise said property and to assist me in taking said inventory, and, after having sworn them as the law requires, proceeded to execute said commission, and under the direction of F. Chapuis, Esq., of said parish, the following-described property was inventoried as belonging to the community between J. Baptiste Cavailliez, dec'd, and the deceased Jeaune Caroline Care, widow of said Cavailliez, dec'd, to wit:

75

1st. A certain plantation situated on the east side of the Vermillion river, measuring ten arpents front on said river, then forty arpents deep, with all the buildings and improvements thereon, including two cotton gins, a grist mill, steam-engine, flat-boat, three ycutto horses, two mules, and fencing, buildings, carts, etc., appraised at seven thousand eight hundred and twenty-five dollars $7,825.00

2nd. A town lot, designated as number 33 of the plan of A. D. Megret's portion of the town of Abbeville, with buildings and improvements situated thereon, bounded north by Concord street, south by lot No. 34, east by lot No. 41, west by Jefferson street, appraised at the sum of one thousand and eight hundred dollars 1,800.00

And the following was appraised as the separate property of said J. C. Care, viz:

3rd. A judgment in favor of said widow Jeaune Caroline Care against the succession of her deceased husband for the sum of five thousand three hundred and ten dollars, with legal interest from the 25th of Feb'y,

1884, bearing mortgage on the aforesaid property,
76 as decreed by judgment of the United States court at Opelousas in the matter of the suit entitled Jeaune Caroline Care, widow, Cavailliez *vs.* Marceline Remick, widow, *et als.*, appraised at seven thousand six hundred and thirty-four $\frac{30}{100}$ dollars..... .... 7,634.30

$17,259.30

There being no other property shown or designated to the appraisers and notary for appraisement, the present inventory was closed, amounting to the sum of seventeen thousand two hundred and fifty-nine and thirty-100 dollars.

1. Amount of community property..	$9,625.00
2. " of judgment of widow against J. B. Cavailliez	7,634.30
Total..	$17,259.30

This done, read, and signed in presence of Mess. Oscar Hebert and Felix O'Neill, competent witnesses of said parish, after due reading of the whole.

E. MONTAGUE, JR.
NUMA FREDERICK.

Witnesses:
OSCAR HEBERT.
FELIX O'NEILL.

FS. CHAPUIS,
Executeur Testamentaire.
LASTIE BROUSSARD,
Notary Public.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify that the foregoing are true and correct copies of the original commission, oath of appraisers, and inventory taken thereunder before Lastie Broussard, notary public, on file in my office and of record in vol. 10 of Conveyances, page 407 *et seq.*, No. 5462, on the 23rd day of December, 1892.

ALCIDE LE BLANC,
Clerk and ex Officio Recorder.

A true copy.

GEO. W. PRADOS,
D'y Clerk, Civil Dist. Court, Parish of Orleans.

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

77 G.

Last Will of Jeanne C. Care, Widow.

Ceci Est. Mon Testament.

Je nomme et institue, coome mon legataire general et universe et mon heritier, Monsieur Francois Chapuis d'Espalinguez, canton de Vaud Suisse residant actuellement a la Nouvelle Orleans, rue de Chartres No. 145.

Je laisse a Mme Veuve Voissin, epouse de Mr. Francois Chapuis deux Mille piastres—a Mr. Constantin Angelman, cinquante piastres, a Mme Aimee, cinquante piastres, a Mr. Lescairet alle d' Orleans No. 33 Bordeaux Gironde Mille piastres. Je nomme et institue Mr. Francois Chapuis, mon executeur testamentaire, avec saisine de mes biens le dispensant de fournier caution.

Fait a la Nouvelle Orleans, ce dis neuf Janvier Mil huit cent quartre-vingt cinq.

CAROLINE CAVILLIEZ BAPTISTE, *Veuve, Née* CARE.

A true copy.

EUG. D'HERETE, *D'y Cl'k.*

Filed Dec. 15th, 1893.

GEO. W. SUMMERS,
D'y Clerk Court.

(Endorsed across the face at the top:) *Ne varietur.* New Orleans, March 10th, 1886. Henry L. Lazarus, judge.

(Endorsed across the face at the bottom:) *Ne varietur.* March 10th, 1886. Henry L. Lazarus, judge.

Record of Suit of L. Lacassague vs. F. Chapuis, Test. Extr., U. S. Circuit Court No. 13234, *Offered in Evidence by Pl'ff in Exception.*

H.

Bill of Complaint.

To the hon. the circuit court of the United States for the
78 western district of Louisiana:

Laurent Lacassague, an alien and a citizen of the Republic of France, brings this his bill of complaint against Francois Chapuis, a citizen and subject of the Republic of Switzerland, in both his capacity of testamentary executor of Jeanne Caroline Care Cavailliez and in his *undivided* capacity, residing in the city of New Orleans, in the eastern district of Louisiana; and your orator, complaining, says that he is the owner of a certain plantation situated in the parish of Vermilion, State of Louisiana, lying and being situated on the east side of the Bayou Vermilion, having a front of ten arpents on said bayou by forty arpents in depth, with the buildings and improvements thereon, bounded on the west by

Bayou Vermilion, on the east by public lands, on the south by Emile Romero, and north by property of Miller, Lyon & Co., together with all the mules, horses, carts, cars, wagons, tools of husbandry, and other plantation equipment thereon.

Your orator shows that he acquired the ownership of said property with Albert G. Maxwell, of this district, in judicial proceedings prosecuted in the district court for the parish of Vermilion in the suit of Albert G. Maxwell *vs.* Marceline Cavailliez, No. 6 on the docket of said court, and by sheriff's deed signed by Joseph S. Nunez, sheriff of said parish of Vermilion, dated August 15th, 1885. A duly certified copy of said deed is hereto attached, made part hereof, and marked Exhibit "A."

The said suit is referred to, and a transcript thereof will be produced on the trial of this cause.

Your orator shows that he acquired the interest of Albert G. Maxwell in said property by act of sale passed before George A. Simmons, dep. clerk dist. court, *ex officio* recorder, and notary public, duly commissioned and qualified, in and for the parish of Vermilion, on the 22nd day of October, 1885, as will fully appear
79 by a duly certified copy of said act of sale hereto attached, made part hereof, and marked Exhibit "B;" that thereby the whole of said plantation became the property of and was vested in your orator.

Your orator shows that one Jeanne Caroline Care Cavailliez, alleging herself to be a citizen of France and to be the widow of Baptiste Cavailliez, dec'd, did on or about the 5th day of March, 1884, institute a suit in equity in this honorable court, sitting at Opelousas, numbered 33 on the docket of said court, wherein said Jeanne Caroline Care Cavailiez was complainant and Marceline Cavailliez, widow of C. H. Remick, in her own right and as tutrix of her minor children, Frank C. Remick, Mary Isabella Remick, Clement Arthur Remick, and Marceline L. Rita Remick, and as tutrix administering the estate of C. H. Remick, dec'd, was defendant; that in said suit the said Jeanne Caroline Care Cavailliez claimed, as the widow of Baptiste Cavailliez, to be the owner of one undivided one-half interest in the above-described plantation, and that the other one undivided one-half interest in said plantation was burdened with a tacit mortgage to secure the sum of five thousand three hundred and ten dollars ($5,310.00), paraphernal property, due her by the succession of Baptiste Cavailliez; that the prayer of complainant's bill is that the aforesaid plantation be decreed to be still the property in indivision of the estate of Baptiste Cavailliez; that your oratrix (meaning Jeanne Caroline Care Cavailliez) be recognized as the owner of one undivided one-half of said plantation, and that she be recognized as a mortgage creditor of said Baptiste Cavailliez in the sum of five thousand three hundred and ten dollars ($5,310.00), with legal interest from judicial demand on the undivided half thereof belonging to said Baptiste Cavailliez; that process was prayed for against Marceline Cavailliez, widow of C. H. Remick, in her individual capacity as tutrix of her minor children and as tutrix administering the estate of C. H. Remick,

and against no other persons; that the bill nowhere avers
80 that the said Marceline Cavailliez, widow of C. H. Remick, was in possession of said plantation when this suit was filed, either for herself individually or as tutrix for her minor children or as tutrix administering the estate of C. H. Remick, deceased, or by agent or employee.

Your orator further shows that he and Albert G. Maxwell were mortgage creditors of said Marceline Cavailliez, widow of C. H. Remick, deceased, and that their mortgage was duly recorded in the mortgage office of the parish of Vermilion at the time and before said suit No. 33 on the docket of this court, sitting at Opelousas, was instituted, and that said recordation operated as notice to said Jeanne Caroline Care Cavailliez and all the world, and that no right nor interest of your orator or of Albert G. Maxwell could be passed on in said suit or be affected by the decree therein made without their being made parties to said suit.

Your orator further shows that this hon. court was without jurisdiction to entertain said suit No. 33 on the docket of this hon. court, sitting at Opelousas, and your orator is informed and believes, and so charges, that said Jeanne Caroline Care Cavailliez, the plaintiff therein, was not a citizen of France, as she falsely alleged herself to be to give this hon. court jurisdiction of the parties, but was a citizen of Louisiana, widow, at New Orleans; that if it be true, as your orator has been informed and believes and charges, it was a fraud practiced upon this court, and that the proceedings in said suit No. 33 on the docket of this court are utterly null and void and should be so pronounced and decreed to be.

Your orator further shows that the judgment rendered in said cause on the — day of January, 1886, adjudged and decreed "that Jeanne Caroline Care Cavailliez be recognized as the lawful widow of Baptiste Cavailliez, and as such be entitled to and decreed to be the owner of the undivided half of the property above described," together with other property, and that Jeanne Caroline Care
81 Cavailliez have judgment against the estate of Baptiste Cavailliez in the sum of five thousand three hundred and ten ($5,310.00), with legal interest from Feb'y 24th, 1884, and that her mortgage to secure the said sum and interest upon the property of Baptiste Cavailliez, to take effect from the 13th of April, 1863, be recognized and enforced. The record in said cause No. 33 on the docket of this court is referred to, to be used on the trial of this cause.

That thereafter, on the 2nd day of Feb'y, 1886, a petition was presented to this court for a writ of possession under said decree, and said petition was granted, and that a writ of possession did issue to the United States marshal for this district; that by said writ the said marshal was ordered "to eject defendant (meaning Marceline Cavailliez, widow of C. H. Remick) and those who may be holding said property, described as aforesaid, under said defendant by private deed of transfer or otherwise since the institution of the aforesaid suit, to wit, and during the pendency of said suit; and you are further ordered to put the said Jeanne Caroline Care,

widow, in full possession of the aforesaid-described property, as prescribed by law.

Your orator shows that said suit was not warranted by the decree which had been rendered in said cause, and was not a proper writ, and that the same was issued improvidently and upon a wrongful suggestion and is null and void; that said pretended writ was executed on the 5th day of February, 1886, "by serving the writ and copy of judgment on Alfred Armenter, who was living in the house and had charge of the property, and he being a major, and I took possession of the said plantation and improvements and then placed them in possession of F. Brulard, as the agent of Jeanne Caroline Care, *dwo* of Baptiste Cavailliez," as will appear by the return of S. C. Price, deputy U. S. marshal, filed Feb'y 8th, 1886, in said record. Your orator shows that he was in possession of said plantation as owner, by his laborers, servants, and employees,
82 when said deputy U. S. marshal pretended to execute the aforesaid writ, and shows to this hon. court that on- F. Brulard did come upon said plantation and does now occupy a portion of the dwelling on said plantation, but that the carpenter and laborers on said plantation have been continuously and still are in service and pay of your orator, and that your orator is deterred from going upon said plantation and exercising his rights of ownership by the violence and threats of said F. Brulard. Your orator claims to be in possession, though his possession is disturbed and interfered with by said Brulard, acting under direction of and advice from defendant, Francois Chapuis. Your orator avers that he has not been a party to any suit and is not bound by any order of a court until he has an opportunity to be heard.

Your orator shows that though the acts were in the name of the deceased, Jeanne Caroline Care Cavailliez, yet your orator is informed and believes, and so charges, that she was prompted and instigated to do all that she did do by the defendant herein, Francois Chapuis, who was named her testamentary executor and universal legatee under her last will and testament.

Your orator charges that the said Brulard is an agent and under the control of said Francois Chapuis, defendant, and of this hon. court; that the illegal writ under which he has taken partial possession is void; that the whole proceeding, number 33 of the docket of this court, is null and void for want of jurisdiction of the parties; that the *plantation* for planting and preparing for crops is passing and irreparable injury is being done to plaintiff; that an injunction *pendent- lite* is necessary to restrain the defendant, Francois Chapuis, as testamentary executor and individually, the agent- and employees, from interfering with the possession of plaintiff or molesting him or his agents and servants on said plantation; that the said plantation —, pending a motion to grant said injunction
83 *pendente lite*, a restraining order should issue as *as* provided by law, the said injunction to be made perpetual on final hearing. Your orator avers that he is without a full, complete, adequate remedy at law and must resort to a court of equity to have his rights determined and secured.

Wherefore your orator prays that the said suit, numbered 33 on the docket of this court, sitting at Opelousas, may be declared an absolute nullity and all the proceedings under it void, because there was no jurisdiction in this court over the parties; that in case said suit is decreed to have been properly brought in this court between the parties thereto, then that said suit be decreed — no force — no effect against the plaintiff herein, he not having been a party to said suit No. 33 and the decree not operating against him, and that the writ of possession under which one S. C. Price is acting as d'y U. S. marshal and one F. Brulard has been partially placed in possession is absolutely null and void and the possession of F. Brulard illegal, and that he be ordered to vacate the premises occupied by him on said plantation and removal therefrom forthwith, and that an injunction *pendente lite* do issue from this court, to be made perpetual at the final hearing, commanding Francois Chapuis, testamentary executor and individually, his agents, servants, and employees generally, and one F. Brulard in particular, to desist from interfering or molesting plaintiff in the possession of said plantation or his laborers, servants, and employees, and, pending a motion to grant said injunction *pendente lite*, that a restraining order issue, as provided by law, and for general relief.

And for subpœna, to be directed to Francois Chapuis, as testamentary executor of Jeanne Caroline Care Cavailliez and individually, commanding him to appear, by a certain time, in a certain place, to plead, answer, or demur to the bill, under a penalty to be fixed, and to stand to, perform, and abide such further order and decree as may seem proper to this hon. court.

84 LAURENT LACASSAGUE.

A. GOLDTHWAITE AND
W. S. BENEDICT,
Solicitors.

THE STATE OF LOUISIANA, }
City of New Orleans. }

On the 10th day of April, 1886, before me personally appeared Laurent Lacassague and made oath that he has read the above bill and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

LAURENT LACASSAGUE.

Sworn to and subscribed before me this 10th day of April, 1886.

K. LOEW,
Comm'r U. S. Court, East Dist. of La.

Endorsement: No. 139. U. S. circuit court, western district La. In equity. Bill of complaint. Filed April 15th, 1886. J. B. Beattie, deputy clerk.

I.

Copy of Subpœna in Chancery.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the western district of Louisiana, Greeting:

You are hereby commanded to summon Francois Chapuis, testamentary executor of Jeanne Caroline Care, widow of Baptiste Cavailliez, and Francois Chapuis, individually, to appear before the honorable the judge of the fifth judicial circuit of the United States of America, at a circuit court to be holden at the city of Opelousas, La., on the first Monday of June, 1886, then and there to
85 answer a bill in chancery filed against them, wherein Laurent Lacassague is complainant and said Francois Chapuis, testamentary executor of Jeanne Caroline Care, widow of Baptiste Cavailliez, and Francois Chapuis are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Monroe, La., this 17th day of April, in the year of our Lord one thousand eight hundred and eighty-six, and the 110th year of American Independence.

J. B. BEATTIE, *D'y Clerk.*

J.

Demurrer.

U. S. Circuit Court, West. Dist. of La. In Equity.

LAURENT LACASSAGUE
vs.
F. CHAPUIS, as Testamentary Executor and Individually, Defendants to the Bill of Complaint of Laurent Lacassague, the Above-named Plaintiff.

These defendants, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same *is* therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that the plaintiff hath not in and by his said bill made or stated such a case as entitles him in a court of equity to any discovery from these defendants or to any relief against them as to the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendants do*th* demur thereto and
86 humbly demand the judgment of this court whether they shall be compelled to make any further answer to the said

bill, and prays to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

LEONARD, MARKS & BRUENN,
A. VOORHIES, *Solicitors.*

In our opinion, the above and foregoing demurrer is well founded in law.

LEONARD, MARKS & BRUENN, *Sol'c'rs.*
ALBERT VOORHIES, *Solicitor.*

STATE OF LOUISIANA, }
City of New Orleans. }

Personally appeared Francois Chapuis, defendant above named, individually and as testamentary executor, who, being duly sworn, says that the above and foregoing demurrer is not interposed herein for any delay.

M. VOORHIES,
Notary Public.

Sworn to and subscribed before me this 2nd day of July, A. D. 1886.

M. VOORHIES,
Notary Public.

Filed July 5th, 1886.

C. MAYO, *D'y Cl'k.*

K.

Plea to Jurisdiction.

U. S. Circuit Court, West. Dist. of La. In Equity.

LAURENT LACASSAGUE }
vs.
F. CHAPUIS, Testamentary Executor and Individually, Defendants to the Bill of Complaint of Laurent Lacassague, Plaintiff. }

These defendants, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are
87 thereby and therein set forth and alleged, for plea to the whole of the said bill saith that, as is alleged and set forth in the bill of complaint herein, the plaintiff, Laurent Lacassague, is an alien, subject of the Republic of France, and these defendants, F. Chapuis, individually and testamentary executor, are aliens, subjects of the Republic of Switzerland; that the act of March 3rd, 1875, U. S. Statutes, provides for and limits the jurisdiction of this court to certain classes and kinds of causes, as in said aforesaid act fully specified and set forth, and that this honorable court is therefore without jurisdiction in the premises.

All which matters and things these defendants doth aver to be true, and they plead the same in bar of plaintiff's bill, and they pray the judgment of this honorable court whether they should be com-

pelled to make any other or further answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

LEONARD, MARKS & BRUENN, *Solicitors.*
ALBERT VOORHIES, *Solicitor.*

STATE OF LOUISIANA, }
City of New Orleans. }

Personally appeared Francois Chapuis, defendant herein, individually and as testamentary executor, who, being duly sworn, says that the above and foregoing is true in point of fact.

FS. CHAPUIS.

Sworn to and subscribed before me this 2nd day of July, A. D. 1886.

M. VOORHIES,
Notary Public.

Filed July 5th, 1886.

C. MAYO, *D'y Clerk.*

L.

88 Writ of possession and marshal's return. See No. 23, "6," page 46.

M.

Judgment U. S. circuit court. See No. 22, "5," page 44.

N.

Voucher or Exhibit.

U. S. Circuit Court, Western Dist. of La.

LAURENT LACASSAGUE }
vs. } No. 139.
F. CHAPUIS, Executor, etc. }

STATE OF LOUISIANA, }
Parish of Vermilion. }

Before me, the undersigned authority, appeared Alfred de Armentor, who, being duly sworn, deposes and says:

I was present when the U. S. deputy marshal put Felix Brulard in possession of the Cavailliez plantation on the 5th of February, 1886, with writ of possession. The officer gave notice to all on the place to vacate, and everybody complied without any resistance or protest, and Felix Brulard was thereupon put in peaceable possession. I am not now living on the Cavailliez place, but since the execution of the writ of possession I have made a contract with Felix Brulard, as agent, to work a part of the place.

his
ALFRED DE x ALMENTOR.
mark.

Sworn to and subscribed before me this 30th day of June, A. D. 1886.

LASTIE BROUSSARD,
Clerk Dist. Court.

O.

Voucher or Exhibit.

U. S. Circuit Court, West. Dist. of La.

89 LAURENT LACASSAGUE } No. 139.
vs.
F. CHAPUIS, Executor, etc.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Before me, the undersigned authority, appeared Felix Brulard, who, being duly sworn, deposes and says: I am — present residing — Cavailliez plantation, in the capacity of agent of Jeanne Cavailliez at first and presently F. Chapuis, executor. I was put in possession by the U. S. deputy marshal on 5th day of February, 1886, since which time I have held the plantation in said capacity. The marshal executed the writ of possession and found no resistance whatever. He ordered the persons on the place to vacate, and they complied without protest or resistance.

F. BRULARD.

Sworn to and subscribed before me this 30th day of June, A. D. 1886.

LASTIE BROUSSARD,
Clerk Dist. Court.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Felix Brulard, sworn, says: My name is Felix Brulard. I was the agent of Mrs. Wid. Cavailliez and accompanied the deputy U. S. marshal who executed the first writ of possession. He caused the plantation (the Remick plantation) to be vacated and put me in the actual possession of the whole plantation. Jean Brun, carpenter, was ordered off, and thereupon, by contract with me, he agreed to remain and work for Mrs. Wm. Cavailliez to make some urgent repairs, with the distinct understanding that I, as agent aforesaid, would pay him for all his work from that date. He remained
90 under my supervision and worked under my directions for some time, when he changed his manner and commenced defying my authority. Subsequently the d'y U. S. marshal came with Mr. Chapuis, executor, to execute a second writ of possession, and then said Brun and his employee Rand were turned out, and immediately obeyed, and have not returned since. When I was first put in possession I found three laborers, Daniel and Louis Montgomery and A. de Amentor, who had been there under my predecessor. They were ordered to vacate by the marshal, but they

asked to make contract with the new possessor, represented by me, and they agreed to work under my superintendence for one year on contract. They have continuously worked under me on the place.

The contract was verbal, in the presence of witnesses, among whom Mr. Romero. At execution of second writ of possession, hearing that the two Montgomerys had made affidavit that they were working for L. Lacassague, I had the matter squared up by having them ordered off; but they pleaded it was all a mistake and were sorry, so I had the original verbal agreement reduced to writing and had them sign the same in the presence of witnesses. I do affirm that from the date I received possession from the marshal I have had absolute control of the whole place all the time up to now without molestation, with the solitary exception of the fraudulent conduct of said carpenter, Brun, who, after working under contract with me for a considerable time and having entered there solely with my permission, nevertheless attempted to change his position and to repudiate my authority, as above explained.

As to Mr. Stansbury, I know nothing of him in connection with the plantation and have never been interfered with by him at any time. Carpenter Brun and his man Rand were ordered off by the deputy marshal and left on the spot of execution of second writ of possession.

The executor, Chapuis, was put in possession, and myself
91 with — as agent. Since then L. Lacassague has never, directly or directly, controlled or attempted to control said plantation, in whole or in part, with the exception, however, of the fraudulent attempt of said Brun to change the position which he then occupied.

F. BRULARD.

Sworn to and subscribed before me, at office, this 25th day of May, A. D. 1886.

LASTIE BROUSSARD,
Clerk Dist. Court.

P.

Voucher or Exhibit.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Louis Montgomery and Daniel Montgomery, sworn, says:

We are laborers on the Remick plantation, which the U. S. marshal has delivered over to Felix Brulard, agent of Mrs. Wid. Cavailliez, when the first writ of possession was executed.

Previous to that time we were working under agreement with the agent of Laurent Lacassague. When Brulard took possession from the dep. marshal, we had to leave or contract with him, Brulard, to stay and work on the place. This we did, and after the second writ of possession our agreement, which was at first verbal, was put to writing. I don't remember what was written in the affidavit made to be used by Laurent Lacassague, but the facts as

stated here are true, and if the first affidavit does not state the facts as above, then it was a mistake. Everybody knows here that since the marshal's visit we have been working on this plantation under Felix Brulard, who has since had the possession of the place.

his
LOUIS x MONTGOMERY.
mark.
his
DANILE x MONTGOMERY.
mark.

92 Sworn to and subscribed before me this 25th day of May, A. D. 1886.

LASTIE BROUSSARD,
Clerk Dist. Court.

Q.

Voucher or Exhibit.

U. S. C. C., Opelousas.

LAURENT LACASSAGUE } No. —.
vs.
F. CHAPUIS, Test. & Ind. }

Exhibit of defendant.

Francois Chapuis, sworn, says:

I am the executor of estate of Wd. Baptiste Cavailliez, and since her death, on March 6th, A. D. 1886, I have been in possession of the plantation in dispute as the executor of her estate, and before that I acted as her agent and had Felix Brulard charged to go and take possession actually and in person from the United States marshal or deputy while enforcing the original writ of possession in matter of the deceased *vs.* Mrs. Wd. Remick and *al.*, No. — of the U. S. circuit court. The marshal actually put said Brulard in possession of the whole plantation in its entirety, in accordance with the terms of the writ.

All parties on the place were notified to vacate in favor of Mrs. Wid. Cavailliez, and this was actually complied with. Since the execution of the said writ plaintiff never had any control, direct or indirect, of said plantation, and the parties residing thereon—laborers, to wit, Louis Montgomery, Danile Montgomery, and A. de Amentor—were allowed to remain on the place by contract with said Brulard from the date of said writ of possession for the term of one year, as will more fully appear by reference to the written contracts annexed hereto, marked A & B.

93 The carpenter, Jean Brun, was then ordered to vacate by the deputy marshal, but thereupon made an agreement with Brulard to continue the necessary repairs to the house and other buildings, with the stipulation that Mrs. Wd. Cavailliez would pay him for all the work done by him since execution of writ.

I went as the agent of Wd. Cavailliez and remained several days

on the plantation, and we were then in the uncontested possession of the whole plantation in its entirety. Shortly after suit was brought by Lacassague in the U. S. circuit court of eastern district of Louisiana, praying for injunction and claiming falsely the possession of said plantation and being simply disturbed, as alleged, in his enjoyment.

The fact was that since the execution of the first writ of possession he never had a shadow of possession, but attempted fraudulently to show that his employees had been constantly and were still in possession under his authority.

Said plaintiff then took the testimony of two of said laborers, ignorant people, to show that they had never been interfered with in holding possession for him, while the truth is that the said laborers (Louis Montgomery and Daniel Montgomery, whose ordinary marks are affixed to the affidavits) have been, like the others, ordered to vacate, and subsequently contracted with Brulard to work on the place by the year for Mrs. Wid. Cavailliez.

They are at present cultivating, under the superintendence of said Brulard, under said contracts (Exhibits A & B); told the other laborer, A. de Amentor, *he* refused to subscribe to plaintiff's affidavit because of the facts above stated.

At first their agreement with Brulard was verbal, but since the injunction suit or bill in equity aforesaid the said laborers, Louis and Danile Montgomery and A. de Amenter, have executed the aforesaid labor contracts, and hence the plaintiff, Lacassague,
94 has avoided again to take their affidavits in the present suit instituted in the western district of Louisiana, and resorts again to the stale affidavits of said Louis and Danilo Montgomery, which come in such questionable shape.

Further, the carpenter, Jean Brun, was on the plantation repairing the house when the U. *D.* marshal executed the first writ of possession, and said Brun was notified to vacate; did cease to work on said place for complainant Lacassague then and there, and afterwards, by contract with Brulard, continued, as aforesaid, to work to necessary repair for Mrs. Wid. Cavailliez.

This he did publicly and openly, to my personal knowledge and to the knowledge of other persons present.

His affidavit, to the contrary, was false and fraudulent, and a prosecution for perjury was therefore instituted against him before a criminal court of the parish of Vermilion.

Owing to these fraudulent devices a new writ of possession was issued in matter of Mrs. Wid. Cavailliez *vs.* Wd. Remick *et als.* after the death of said Mrs. Wid. Cavailliez, and thereupon, as appears by return of the U. S. marshal, I, as executor, was formally put in possession of said plantation, of which, however, my agent Brulard had always had full corporeal possession in its entirety, as above related; and thereupon all the persons on said place, the said Brun and his co-carpenter and the three laborers aforesaid, were ordered to vacate, and then and there the said three laborers executed the said written contracts (Exhibits A & B), which are but written evidence of the

verbal contracts under which they had remained on the premises since the execution of the first writ of possession.

No prosecution for perjury were made against said colored laborers, Daniel and Louis Montgomery, because they begged to be excused, affirming that their affidavits were made in error.

Since the execution of said second writ of possession I,
95 defendant, as executor and as sole heir and universal legatee of Mrs. Wid. Cavailliez, have held and now hold actual possession of the whole of said plantation in its entirety. Everybody being thereon is there by special contract with me, and nobody not authorized by me can put his foot thereon. The affiant, Stansbury, never appears there. The carpenter, Brun, has disappeared and never shows himself, and said three laborers are working as my employees under my agent Brulard.

For further testimony I refer to my affidavit on file in the injunction suit in the eastern district of La. and to the affidavit of Mrs. Wid. Cavailliez, also on file there. I refer also to the affidavits of Felix Brulard, living on the place since execution of first writ of possession, and to those of E. Romero and A. de Armentor.

I was born in Switzerland, am a Swiss citizen, and have never been naturalized as a citizen of any other country.

FS. CHAPUIS.

Sworn to and subscribed before me this 22nd day of May, A. D. 1886.

M. VOORHIES,
Notary Public.

R.

Decree on Application for Injunction.

United States Circuit Court.

LAURENT LACASSAGUE
vs.
F. CHAPUIS, Test'y Ex't'r & Ind. } No. 139. In Equity.

This cause came on to be heard on application for injunction on affidavits filed, and on argument of counsel for complainant and for defendants, and considering same, the court concludes that the application for injunction should be denied, and it is there-
96 fore ordered, adjudged, and decreed that the restraining order hereinbefore made be set aside and vacated, and that the prayer for injunction be denied, this cause having by argument been submitted to the court to be decided at any subsequent time — chambers.

Done and signed in chambers this August 19th, A. D. 1886.

ALECK BOARMAN, *Judge.*

Endorsement: No. 139. L. Lacassague *vs.* F. Chapuis, test'y exct. Decree. Filed Aug. 25th, 1886. E. J. Nolan, d'y clerk.

S.

Judgment Sustaining Demurrer.

U. S. Circuit Court, Western Dist. La.

L. LACASSAGUE
vs.
F. CHAPUIS, Executor, ET AL. } No. 139. In Equity.

In this case, by reason of the law, it is ordered, adjudged, and decreed that demurrer be sustained and that plaintiff's bill be dismissed.

Done and signed at Shreveport this 8th day of August, 1887.

ALECK BOARMAN, *Judge.*

Endorsement: No. 139. L. Lacassague *vs.* F. Chapuis, exct., *et al.* Decree. Filed Aug. 8th, 1887. E. J. Nolan, d'y clerk.

I do hereby certify that the above forty-eight pages, from 1 to 48, inclusive, contain a true, faithful, and complete transcript of all documents filed, ordered made, proceedings had, and evi-
97 dence adduced in case of Laurent Lacassague *vs.* F. Chapuis, test. ex't'r and individually, in equity, No. 139 of the docket of this court.

Given under my hand and seal of office this 3rd day of June, 1893.

B. BLOOMFIELD,
Deputy Clerk.

U. S. circuit court, western district of Louisiana. Filed Dec. 15th, 1893. Geo. W. Summers, d'y clerk dist. court.

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H. ABRAHAM & SON
vs.
F. CHAPUIS. } Suit No. 540.

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"*Record of Suit Entitled H. Abraham & Son vs. Francois Chapuis, No.* 540, *Dist. Court. Offered in Evidence by Plaintiffs in Exception.*"

A 1.

Petition.

To the hon. the judge of the 17th judicial dist. court of the State of Louisiana for the parish of Vermilion:

The petition of H. Abraham & Son, a commercial firm composed of Henry Abraham and Jake H. Abraham, domiciled and doing business in the city of New Orleans, this State, with respect represents:

That your petitioners are the holders and owners of three certain promissory notes, made and subscribed by Francois Chapuis, a resident of the parish of Vermilion, as follows, to wit:

First. One certain promissory note, dated New Orleans, August 1st, 1888, for the sum of six hundred and eighty-seven $\frac{20}{100}$ dollars, payable one year after its date to the order of F. Chapuis, and by him endorsed, bearing eight per cent. per annum interest
99 from its date until paid, all of which will more fully appear by reference to said note, hereto annexed and made part hereof and marked "Exhibit A." That in order to secure the payment of said note, principal, interests, and five per cent. on amount sued for as attorneys' fees, the said Francois Chapuis entered into, before Richard C. Stockton, a notary public for the city of New Orleans, on the first day of August, 1888, and signed and delivered unto Henry Deriaz a special mortgage in favor of said Henry Deriaz or any future holder or holders of said note on the following-described property, to wit:

1st. A certain plantation situated on the east side of the Bayou Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said Bayou Vermilion by forty arpents in depth,

together with the buildings and improvements thereon, bounded west by Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with all the stock now thereon, including mules, horses, milch cows, carts, wagons, tools, &c.

2nd. A town lot in the town of Abbeville, in the parish of Vermilion, this State, being No. 33 of the plat of said town, with buildings, &c., bounded west by Jefferson street, north by Concordia street, south by lot 34, east by lot 31.

And as a further guarantee for the payment of said note said Francois Chapuis further pledges in favor of said Henry Deirez a certain judgment rendered by the circuit court of the United States, fifth circuit and western district of Louisiana, in the matter of Jeanne Caroline Care, widow, *vs.* Marceline Cavailliez, widow, & *als.*, No. 33 of the docket, for $5,310.00, with legal interest from Feb'y 25th, 1884.

And the said Francois Chapuis did further confess judgment in said notarial act for the amount of said note, with interests,
100 as aforesaid, and all costs and charges, expenses and attorneys' fees, as aforesaid, with waiver of appraisement of said property: all of which will more fully appear by reference to a certificate copy of said notarial act, hereto annexed and made part hereof and marked "Exhibit B," and which said act of mortgage was duly recorded in Vermilion parish in vol. 2 of Mortgages, No. 589, at page 276 *et seq.*, on October 18th, 1888, as appears by the certificate thereto appended and marked "Exhibit C."

Your petitioners further represents that they acquired said note for full value on March 11th, 1891, by notarial transfer before Joseph Duvignead, notary public for the city of New Orleans, as will more fully appear by reference to said notarial act, hereto annexed and made part hereof and marked "Exhibit D."

Second. Another promissory note, dated New Orleans, April 7th, 1890, for the sum of thirteen hundred and three $\frac{70}{100}$ dollars, payable one year after its date, to the order of F. Chapuis, and by him endorsed, bearing eight per cent. per annum interest from March 10th, 1890, until paid, all of which will more fully appear by reference to said note, hereto annexed and made part hereof and marked "Exhibit E."

That in order to secure the payment of said note, principal and interest, and five per cent. attorneys' fees, said F. Chapuis entered into, before Martin Voorhies, a notary public for the city of New Orleans, on the seventh day of April, 1890, and signed and delivered unto your petitioners a special mortgage in favor of your petitioners or any petition holder or holders of said note *as* the following-described property, situated in the parish of Vermilion, viz:

All the right, title, interest, claim, and demand of the said Fran-
cois Chapuis in a certain plantation situate on the east side of
101 the Bayou Vermilion, in the aforesaid parish of Vermilion having a front of ten arpents on said Bayou Vermilion by a depth of forty arpents, together with the buildings and improvements thereon, bounded west by Bayou Vermilion, east by public

lands, south by the property of Numa St. Julien, and north by property of Euclide Roy, which said right, title, interest, claim, and demand of the said Francois Chapuis was acquired by him as universal legatee of Jeanne Caroline Care, widow of Baptiste Cavailliez, duly recognized as such, and sent in possession of all her property and effects, as the whole will fully appear by reference to the mortuary proceedings had in the matter of her succession, No. 17091 of the docket of the civil district court for the parish of Orleans, and the interest of the said Mrs. Widow Jeanne Caroline Care was acquired as follows, to wit: By a judgment rendered on the 11th day of January, 1886, by the Hon. Aleck Boarman, judge of the fifth circuit, United States circuit court, western dist. of La., in the matter of the suit of Jeanne Caroline Care, widow, *vs.* Marceline Cavailliez, widow, etc., No. 33 of the docket of said court, she was decreed to be the owner as the surviving widow in community of the real estate above described—that is to say, of the undivided half thereof—and it was further decreed that she have judgment against the estate of Baptiste Cavailliez in the sum of five thousand three hundred dollars, with legal interest from Feb'y 25th, 1884, and that her mortgage to secure the aforesaid sum and interest upon the property of Baptiste Cavailliez take effect from April 13th, 1863, be recognized and enforced, all of which will more fully appear by reference to a certified copy of said act of mortgage, hereto annexed and made part hereof and marked "Exhibit F," and which said act of mortgage was duly recorded in the parish of Vermilion in vol. 3 of Mortgages, No. 1335, page 174, on April 15th, 1890, as appears by the certificate hereto appended and marked "Exhibit G."

102 Thirdly. Another promissory note, made and subscribed by F. Chapuis, dated New Orleans, May 14th, 1891, for the sum of fourteen hundred and one $\frac{12}{100}$ dollars, payable on Feb'y 15th, 1892, to the order of F. Chapuis and by him endorsed, bearing eight per cent. per annum interest from May 14th, 1896, until paid, all of which will more fully appear by reference to said note, hereto annexed and made part hereof and marked "Exhibit H." That in order to secure the payment of said note in principal and interest and five per cent. attorneys' fees the said Francois Chapuis entered into, before Martin Voorhies, a notary public for the city of New Orleans, on May 14th, 1891, and signed and delivered unto your petitioner- a special act of mortgage in favor of your petitioners or any future holder or holders of said note on the following-described property, situated in the parish of Vermilion, viz:

One certain plantation situate on the east side of the Bayou Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said bayou by a depth of forty arpents, bounded west by said Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with all the buildings and improvements thereon and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining, being the same property which the said F. Chapuis acquired, as follows, to wit: By judgment of the U. S. circuit — for the fifth circuit, western district of Louisiana, dated

July 11th, 1886, in the suit entitled Jeanne Caroline Care, widow, *vs.* Marceline Cavailliez, widow, *et als.*, No. 33 of the docket of said court, Mrs. Caroline Care, widow, was decreed to be the owner of the one undivided half of the above-described property and to judgment against the other undivided half in the sum of five thousand three hundred dollars, with legal interest from April 13th, 1863.

103 And in the matter of the succession of the said Jeanne Caroline Care, widow of J. B. Cavailliez, No. 17091 of the docket of the civil district court for the parish of Orleans, Francois Chapuis was recognized as her sole heir and universal legatee, and as such put in possession.

And subsequently, on the third day of June, the said Francois Chapuis acquired at sheriff's sale the undivided half of said property sold under order of court; all of which will more fully appear by a certified copy of said act of mortgage, hereto annexed and made part hereof and marked "Exhibit J," and also certified copy of sheriff sale, hereto annexed and made part hereof and marked "Exhibit K."

Your petitioner further represent that in said act of special mortgage marked "Exhibit J" the said Francois Chapuis acknowledged, affirmed, and maintained the validity and legality of the two acts of mortgage afore recited and marked Exhibit B and Exhibit F respectively, one passed before Martin Voorhies, notary public, on April 7th, 1890, the other passed before Richard Stockton, notary public, on August 1st, 1888, as also the validity and legality of the aforerecited act of subrogation passed before Jos. Duvigneaud, notary public, on March 11th, 1891.

Your petitioners further represent that the said Francois Chapuis is justly and legally indebted unto them in the full sum of thirty-five hundred and seventy-two and $\frac{2}{100}$ dollars, with eight per cent. per annum interest on $687.20 thereof from August 1st, 1888, till paid, and the further sum of five per cent. additional on the aggregate for attorneys' fees, and a like interest on $1,303.70 thereof from March 10th, 1890, with five per cent. additional on the aggregate for attorneys' fees, and a like interest on the balance, to wit, $1,401.12, from May 14th, 1891, till paid, with five per cent. additional for attorneys' fees.

104 That the special mortgage given, as hereinbefore recited, to secure said notes in principal, interest, charges, expenses, and attorneys' fees should be recognized to take effect from their respective dates on the property therein respectively described.

Your petitioners aver amicable demand to no avail.

Premises considered, your petitioners respectfully prays that Francois Chapuis may be duly cited as the law directs, and that your petitioners have judgment and recover of the said Francois Chapuis the full sum of thirty-five hundred and seventy-two and $\frac{2}{100}$ dollars, with eight per cent. per annum interest on six hundred and eighty-seven and $\frac{20}{100}$ dollars, from August 1st, 1888, till paid, with five per cent. additional on the aggregate for attorneys' fees, and a like interest, to wit, eight per cent. on thirteen hundred and three

and $\frac{70}{100}$ dollars, from March 10th, 1890, with five per cent. additional on the aggregate for attorneys' fees, and a like interest, to wit, eight per cent. on the sum of fourteen hundred and one and $\frac{12}{100}$ dollars, with five per cent. additional on the aggregate for attorneys' fees.

Your petitioners further pra*t* that the special mortgage given to secure said notes be recognized to bear on the property therein described, to take effect from their respective dates.

They further pray after the expiration of all delays and no satisfaction of the judgment herein prayed for that said special mortgages and judgment thereon be enforced against the following-described property, and that the same be seized in satisfaction thereof, to wit:

One certain plantation situate on the east side of Bayou Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said bayou by a depth of forty arpents, bounded west by said Bayou Vermilion, east by public lands, south by property of Numa St. Julien, north by property of Euclide Roy,
105 together with all the buildings and improvements thereon, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining, and all work stock, agricultural implements, and such other appurtenances thereto attached.

Your petitioners further pray for all costs and for general relief, &c., and as in duty bound.

W. A. WHITE,
C. DEBAILLON,
Of Counsel.

Filed Feb'y 11th, 1893.

ALCIDE LE BLANC,
Clerk of Court.

Three Notes and Authentic Acts Annexed to and Referred to in Above Petition and Marked Exhibits A, B, C, D, E, F, G, H, and J & K.

"EXHIBIT A."

$687.20. NEW ORLEANS, *August 1st*, 1888.

One year after date I promise to pay to the order of myself six hundred and eighty-seven $\frac{20}{100}$ dollars, for value received, with interest, at the rate of 8 % per annum, after date until paid.

F. CHAPUIS.

"Endorsement:" F. Chapuis.

Written across the face: "*Ne varietur.*" Secured by mortgage by act this day, August 1st, 1888. R. C. Stockton, N. P.

EXHIBIT "B."

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans.

Be it known that on this first day of August, in the year of our Lord 1888, and of the Independence of the United States of America the one hundred and —, before me, Richard C. Stockton, a notary public, duly commissioned and sworn, in and for this city and the parish of Orleans, therein residing, and in the
106 presence of the witnesses hereinafter named and undersigned, personally appeared Mr. Francois Chapuis, residing in the parish of Vermilion, in this State, who declared that he is justly and truly indebted unto Mr. Henry Deriaz, residing in this city, in the full sum of six hundred and eighty-seven $\frac{20}{100}$ dollars, money this day advanced and loaned to him, in legal currency of the United States of America, by said Deriaz, and in order to secure the faithful return and reimbursement of said sum within a definite period the said debtor has made, executed, and issued his certain promissory note for said sum of six hundred and eighty-seven $\frac{20}{100}$ dollars, dated this day, drawn by him to his own order and by him endorsed and made payable in one year after date, with interest from date, at the rate of eight per cent. per annum, until paid; which said note, after having been paraphed "*ne varietur*" by me, notary, to be herewith identified, was delivered to the said Henry Deiraz, as he acknowledges.

And *it can* it shall become necessary to institute legal proceedings for the recovery of the amount of said note or of any part thereof, the said Francois Chapuis binds himself to pay the fees of the attorney-at-law who may be employed for that purpose; which fees are hereby fixed at five per cent. on the amount sued for:

Now, therefore, in order to secure the punctual payment of the said note at maturity, together with all interests and attorneys' fees, the said Chapuis declared that he does by these presents mortgage, effect, and specially hypothecate in favor of the said Henry Deriaz, and to enure to the use and benefit of any and all future holder or holders of said note, the said Deriaz being here present and accepting, the following-described property, to wit:

1st. A certain plantation situated on the east side of Bayou Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said bayou by forty arpents in depth, together with the buildings and improvements thereon,
107 bounded west by Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with all the stock now thereon, including mules, horses, milch cows, carts, wagons, tools, &c.; which property was acquired by the present vendor by purchase from Ernest F. Wesche by act passed before me on this first day of August, 1888.

2nd. A town lot in the town of Abbeville, in the parish of Ver-

milion, in this State, being No. 33 of the plat of said town, with buildings, &c., bounded west by Jefferson street, north by Concordia street, south by lot 34, and east by lot 31.

And as a further guarantee for the payment of said note, said Francois Chapuis further pledges in favor of said Henry Deriaz a cert-in judgment rendered by the circuit court of the U. S., fifth circuit and western dist. of La. in the matter of Jeanne Caroline Care, widow, *vs.* Marceline Cavailliez, widow, *et als.*, No. 33 of the docket, for $5,310.00, with legal interest from Feb'y 25th, 1884.

The said premises, it is well understood, shall remain thus mortgaged and hypothicated until the full and final payment of the aforesaid promissory note and of any and all renewals of extentions of payment thereof.

And the said Chapuis hereby binds himself and his heirs not to sell, alienate, mortgage, nor in anywise incumber the said premises to the prejudice of these presents.

The said Chapuis further declared that he does by these presents consent, agree, and stipulate that in the event of the said promissory note not being punctually paid at maturity it shall be lawful for, and he hereby authorizes, the said mortgagee or any holder or holders of said note to — all and singular the property hereinbefore described and herein mortgaged to be seized and sold under
108 executory process, issued by any competent authority, without appraisement, to the highest bidder, payable cash.

The said mortgagor hereby expressly dispensing with all and every appraisement of said property, and by these presents waiving and renouncing the benefit of appraisement and of all laws or part of laws relative to the appraisement of movable or immovable effects or property seized and sold under executory or other legal process.

And the said Chapuis does hereby confess judgment in favor of the said mortgagee and all person or persons as may be the holder or holders of the said note for the full amount thereof, together with all interests and costs.

According to the certificate of the clerk of court and *ex officio* recorder of the parish of Vermilion, annexed to an act of sale passed before me this day, being a sale by Francois Chapuis to Ernest F. Esche, it appears that the property hereby mortgaged is clear of encumbrances other than those therein stated, and the mortgage herein consented is accepted, subject to the mortgages enumerated and set forth in said certificate.

Thus done and passed in my office, at New Orleans, on the day, month, and year aforesaid, in presence of Louis N. Perret and Anatole A. Ker, competent witnesses, hereto required, who have signed these presents with the parties hereto and me, notary, after due reading of the whole.

F. CHAPUIS.
H. DERIAZ.

ANAT. A. KER.
LOUIS N. PERRET.

R. C. STOCKTON, *N. P.*

"EXHIBIT C."

STATE OF LOUISIANA,
Parish of Vermilion.

109 Duly recorded in vol. 2 of Mortgages, No. 857, page 276 *et seq.*, Oct. 18th, 1888.

GEO. W. SUMMERS,
[SEAL.] *D'y Clerk and Recorder.*

STATE OF LOUISIANA,
City of New Orleans.

I, Martin Voorhies, custodian of notarial records in and for this city and the parish of Orleans, duly commissioned and qualified, do hereby certify the above and foregoing to be a true copy of the original act, extant and of record in the archives of R. C. Stockton, late a notary in this city, whose notarial records now belong to and are on file and of record in the archives of my office.

In faith whereof I hereunto set my hand and affix my seal of office this 18th day of February, 1891.

M. VOORHIES,
Custodian Notarial Records.

Filed Feb'y 11, '93.

ALCIDE LE BLANC,
Clerk of Court.

"EXHIBIT E."

$1,303.70. NEW ORLEANS, *April 7th*, 1890.

One year after date I promise to pay to the order of myself thirteen hundred & three $\frac{70}{100}$ dollars, at the counting-room of Messrs. H. Abraham & Son, in this city, for value received, with interest, at the rate of eight per cent. per annum, from March 10th, 1890, until paid.

A. M. MER,
P. Pro F. CHAPUIS.

(Endorsement upon face of above:) "*Ne varietur.*" For identification with an act passed this day before me, M. Voorhies, notary public. Filed February 11, '93. Alcide Le Blanc, clerk.

"Endorsement:" *P. pro* F. Chapuis, A. M. Mer. Pay to the order of Canal bank for collection. H. Abraham & Son.

"EXHIBIT F."

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

110 Be it known that on this seventh day of the month of April, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America

the one hundred and fourteenth, before me, Martin Voorhies, a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Alexander M. Mer, of the city of New Orleans, herein acting in his capacity of agent and attorney-in-fact of Mr. Francois Chapuis, of the parish of Vermilion, in this State, by virtue of two acts of procuration under private signature, the one dated the fifth day of October last, 1889, duly acknowledged before Alcide Le Blanc, clerk of the district court in and for said parish of Vermilion, and the other dated the 31st day of March last, 1890, both of which acts of procuration are hereto annexed for reference.

And said appearer, acting as aforesaid, declared and acknowledged that the said Francois Chapuis is justly and truly indebted unto the commercial firm of H. Abraham & Son, of this city, in the full sum of thirteen hundred and three $\frac{70}{100}$ dollars, balance due on account current for advances *for advances* furnished to him by said firm up to the tenth day of March, 1890, as per statement hereto annexed and made part hereof; and, for settlement and reimbursement of said sum, the said A. M. Mer, acting as aforesaid, has made and subscribed one certain promissory note for the sum of thirteen hundred and three $\frac{70}{100}$ dollars, dated this day, payable at the counting-room of Messrs. Abraham & Son, in this city, one year after date, to his own order, and stipulating to bear interest, at the rate of eight per cent. per annum, from the tenth day of March last, 1890, until paid; which said note, after having been paraphed "*Ne varietur*" by me, notary, for identification herewith, was delivered unto Mr. Jacob H. Abraham, member of said firm of H. Abraham & Son, herein representing said firm, here present, hereby acknowledging the receipt thereof.

Now, in order to secure the full and punctual payment of above-described note, in capital and interest, together with all attorneys' fees, as hereinafter specified, the said A. M. Mer, acting as aforesaid, does by these presents mortgage, affect, and specially
111 hypothecate in favor of the said H. Abraham & Son, and to enure to the use and benefit of any and all holder or holders of the said note, the following-described property, to wit:

All the right, title, interest, claim, and demand of the said Francois Chapuis in a certain plantation situate on the east side of the Bayou Vermilion, in the aforesaid parish of Vermilion, having a front of ten arpents on said Bayou Vermillion by a depth of forty arpents, together with the buildings and improvements thereon, bounded west by Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy.

Which said right, title, interest, claim, and demand of the said Francois Chapuis was acquired by him as universal legatee of Jeanne Caroline Cave, widow of Baptiste Cavailhez, duly recognized as such and sent in possession of all her property and effects, as the whole will fully appear by reference to the mortuary proceedings had in the matter of her succession, No. 17091 of the docket of the civil district

court for the parish of Orleans, and the interest of the said Mistress Widow Jeanne Caroline Cave was acquired as follows, to wit:

By a judgment rendered on the 11th day of January, 1886, by the Hon. Aleck Boarman, judge of the fifth circuit, United States circuit court, western district of Louisiana, in the matter of the suit of Jeanne Caroline Cave, widow, *versus* Marceline Cavailhez, widow, *et als.*, No. 33 of the docket of said court, she was decreed to be the owner, as the surviving widow, in community of the real estate above described—that is to say, of the one undivided half thereof; and it was further decreed that she have judgment against the estate of Baptiste Cavailhez in the further sum of five thousand three hundred dollars, with legal interest from the 25th Feb'y, 1884, and that her mortgage to secure the aforesaid sum and interest upon the property of Baptiste Cavailhez take effect from the 13th day of April, 1863, be recognized and enforced.

The said property so to remain mortgaged and hypothecated until the full and final payment of the aforesaid promissory note in capital & interest, the said mortgagor hereby binding himself not to sell, alienate, mortgage, or encumber the same to the prejudice of these presents.

And the said mortgagor moreover binds himself, in case it should become necessary to institute suit for the recovery of the
112 amount of said note or of any part thereof, to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

The parties hereto dispense with the production of a certificate of mortgages from the office of the clerk of the dist. court for the parish of Vermilion, as otherwise required by law, and exonerate the undersigned notary from all responsibility in the premises.

It is understood by and between the parties that when the above-described note shall become due Mr. F. Chapuis, upon payment of not less than two hundred dollars on account, shall be entitled to a prorogation of the payment thereof for one year longer under the terms and conditions as hereinabove specified.

All of which is hereby accepted by the said Mr. Jacob H. Abraham for and in behalf of his said firm of H. Abraham & Son.

Thus done and passed in my office, at the city of New Orleans aforesaid, on the day and date first above written, in the presence of Messrs. Albert Lesseps and Paul E. Voorhies, competent witnesses, who sign these presents, together with the parties and me, notary, after reading the whole.

(Signed) *P. Pro* F. CHAPUIS,
A. M. MER.
JACOB H. ABRAHAM.

ALBERT LESSEPS.
P. E. VOORHIES.
M. VOORHIES,
Notary Public.

STATE OF LOUISIANA, }
City of New Orleans. }

I, Martin Voorhies, notary public in and for this city and the parish of Orleans, duly commissioned and qualified, do hereby certify the above and foregoing to be a true and correct copy of the original act extant and of record in the archives of my office.

In faith whereof I hereunto set my hand and affix my seal of office this eighth day of April, A. D. 1890.

[SEAL.] M. VOORHIES,
Notary Public.

"EXHIBIT G."

113 Recorded in vol. 3 of Mortgages, No. 1335, page 174, on this 15th day of April, A. D. 1890.

ALCIDE LE BLANC,
Clerk and Recorder.

Filed Feb'y 11, '93.

ALCIDE LE BLANC,
Clerk of Court.

"EXHIBIT H."

$1,401.12. NEW ORLEANS, *May* 14, 1891.

On the fifteenth of February next after date I promise to pay to the order of myself one thousand four hundred and one $\frac{12}{100}$ dollars at the counting-room of Messrs. H. Abraham & Son, in this city, for value received, with interest, at the rate of eight per cent. per annum, from this date until paid.

F. CHAPUIS.

"Endorsement:" F. Chapuis.

(Endorsed upon the face of the above:) "*Ne varietur.*" For identification with an act passed this day before me. New Orleans, May 14th, 1891. M. Voorhies, notary public. Filed Feb'y 11, '93. Alcide Le Blanc, clerk.

"EXHIBIT J," MAY 14TH, 1891.

Acknowledgment, with Mortgage, Pledge, and Pawn, etc., Francais Chapuis, Favor of H. Abraham & Son.

UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Orleans, }
City of New Orleans. }

Be it known that on this fourteenth day of the month of May, in the year of our Lord 1891, and of the Independence of the United States of America the 115th, before me, Martin Voorhies, a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the
114 witnesses hereinafter named and undersigned, personally came and appeared Mr. Francis Chapuis, of the parish of Ver-

milion, State of Louisiana, and, 2nd, Mr. Henry Abraham, a member of the commercial firm of H. Abraham & Son, of the city of New Orleans, and herein representing said firm, and the said Francois Chapuis declared that he is justly and truly indebted unto said commercial firm of H. Abraham in the full sum of three thousand seven hundred & twenty two $\frac{13}{100}$ dollars, as per statement approved and accepted, hereto annexed and made part hereof.

That said indebtedness is formed and composed as follows, to wit:

1°. One promissory note, drawn by him to his own order and by him endorsed, dated the 7th day of April, A. D. 1890, payable one year after date, with interest, at the rate of eight per cent. per annum, from date until paid, for the sum of one thousand three hundred and three $\frac{70}{100}$ dollars	$1,303.70
The interest due thereon to date...	124.04
	$1,427.74

Which said note is paraphed "*Ne varietur*" by the undersigned notary for identification with an act passed in this office on the 7th day of April, A. D. 1890, and is secured by mortgage and pledge on certain property described in said act & situated in said parish of Vermilion.

2nd. One certain promissory note, drawn by him to his own order and by him endorsed, date- 1st day of August, A. D. 1888, for the sum of six hundred and eighty-seven $\frac{20}{100}$ dollars, payable one year after date..	687.20
Interests & costs accrued thereon	193.93

Which said note is paraphed "*Ne varietur*" by R. C. Stockton, late a notary public in this city, for identification with an act of even date passed before him securing the payment of said note by mortgage on certain property therein described & situate in said parish of Vermilion, and which said note is now held and owned by H. Abraham & Son by virtue of an act of subrogation passed before Jos. Duvignaud, a notary public in this city, under date of the eleventh day of March last past (1891).

And third (3rd). In ready current money loaned and — to him by the said H. Abraham & Son, the sum of fourteen hundred $\frac{18}{100}$ dollars.....	1,400.18
With interest to date.....	94
	$3,722.13

115 Now, the said Francois Chapuis declared that he does hereby acknowledge and maintain the validity and legality of the two acts of mortgage afore recited—the one passed in this office on the 7th day of April, A. D. 1890; the other passed before R. C. Stockton, notary, on the 1st day of August, 1888—as also the

validity and legality of the afore-recited act of subrogation, passed before Jos. Duvigneaud, a notary in this city, on the 11th day of March, 1891.

That the present acknowledgment of his said indebtedness is not to be in any way considered as a novation of the same, but, on the contrary, as an affirmance of the validity and legality of the mortgages granted to secure its payment, with all the terms, clauses, and conditions as set forth in said acts to remain in full force and effect to all intents and purposes.

Now, in order to represent and liquidate the amount of the loan hereinabove thirdly mentioned, amounting to the sum of fourteen hundred and one $\frac{12}{100}$ dollars, and to secure the payment thereof, with all eventual interests, costs, &c., the said Francois Chapuis has presently furnished his certain promissory note, drawn by him to his own order and by him endorsed in blank, dated this day, for the sum of fourteen hundred and one $\frac{12}{100}$ dollars, payable on the 15th day of Febr'y next after date, at the counting-room of Messrs. H. Abraham & Son, in this city, with interest, at the rate of eight per cent. per annum, from date until paid; which said note, after having been paraphed "*Ne varietur*" by me, notary, for identification herewith, was delivered to the said Mr. Abraham, who acknowledges the receipt thereof.

In case of suit to enforce the collection of said note, Mr. Francois Chapuis agrees and binds himself to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, in order to secure the full and punctual payment of the above-described notes, in capital and interest, with all attorneys' fees and premiums of insurance as herein specified, the said Francois Chapuis declared that he does by these presents mortgage, affect, and specially hypothecate in favor of the said H. Abraham & Son, and to enure to the use and benefit of any and all holder or
116 holders of said promissory note, the said Mr. Henry Abraham, acting as aforesaid, being here present and accepting, the following-described property, to wit:

A certain plantation situate on the east side of Bayou Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said Bayou Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said bayou by a depth of forty arpents, bounded west by said Bayou Vermilion, east by public lands, south by property of Numa St. Julien, north by property of Euclide Roy, together with all the buildings and improvements thereon, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining.

Being the same property which the said F. Chapuis acquired as follows, to wit: By judgment of the United States circuit court for the fifth circuit, western district of Louisiana, dated the 11th of January, A. D. 1866, in the suit entitled Jeanne Caroline Cave, widow, *vs.* Marceline Cavailhez, widow, *et als.*, No. 33 of the docket of said court, Mrs. Caroline Cave, widow, was decreed to be the owner of the undivided half of the above-described property, and

to judgment against the other undivided half in the sum of five thousand three hundred dollars, with legal interest from April 13th, 1863.

And in the matter of the succession of said Jeanne Caroline Cave, widow J. B. Cavailhez, No. 17091 of the docket of the civil district court for the parish of Orleans, Francois Chapuis was recognized as her sole heir and universal legatee, and as such put in possession.

And subsequently, on the third day of June, the said Francois Chapuis acquired at sheriff's sale the undivided half of said property belonging to the estate of J. B. Cavailhez, sold under order of the 25th jud'l dist. court of Louisiana in and for the parish of Vermilion, issued in the matter of said estate.

The said property so to remain mortgaged and hypothecated until the full and final payment of the aforesaid promissory note in capital and interest, the said mortgagor hereby binding himself & his heirs not to sell, alienate, or encumber the same to the prejudice of these presents.

117 The said mortgagor further binds himself to keep the buildings on above-described property constantly insured against the loss by fire in one of the good insurance companies of this city & to transfer such insurance to the mortgagee or any other holder or holders of the above-described note up to the sum of two thousand five hundred dollars, said mortgagor hereby authorizing said mortgagee or any holder or holders of above-described note to cause said insurance to be effected on his default at a premium not exceeding seven per cent.

Mr. Francois Chapuis here declared that the above-described property is free from any incumbrance in his name, except the two mortgages hereinabove recited, the one dated August 1st, 1888, passed before R. C. Stockton, notary, to secure $687.20, interests & costs, & the other dated April 7th, 1890, passed in this office, to secure $1,303.70, interest & costs, and both of which belong to the present mortgagee, and the said Francois Chapuis binds himself to produce a proper certificate to that effect to be annexed to the present act within the next fifteen days.

And the said Mr. Henry Abraham, acting as aforesaid, declared that he does hereby prorogue the payment of the two promissory notes hereinabove firstly & secondly described up to the 15th day of next February, A. D. 1892, without novation of any kind, all of which is hereby accepted by Mr. Francois Chapuis; and in further consideration of the advances thus made to him the said F. Chapuis promises & binds himself to ship & consign to said firm of H. Abraham & Son, in this city, the entire crop of cotton gathered during this current year on the above plantation, as also all the cotton that he will control to an amount not less than two hundred bales, or pay a commission of one dollar and twenty-five cents on each bale falling short of said amount.

And all cotton thus consigned shall be sold at the usual rate of commission business & the net proceeds thereof placed to his credit on open account in the manner following, to wit:

One-third to be imputed *pro tanto* to the payment of the entire indebtedness herein acknowledged and the balance to be placed to the credit of Mr. F. Chapuis on open account for settlement on the 31st day of January next (1892).

118 And to further secure the payment & reimbursement of all the advances made as herein specified, the said F. Chapuis declared that he does, by these presents, pledge & pawn to the full extent of the law, unto & in favor of the said H. Abraham & Son, the entire crop of cotton raised and gathered on the above-described & herein-mortgaged plantation.

Thus done and passed in my office, at the city of New Orleans, in the presence of Messrs. Lucien Voorhies & Jerome Eugene Tairex, competent witnesses, who have signed these presents, together with the parties and me, notary, on the day and date first above written.

H. ABRAHAM & SON,
Per H. ABRAHAM.
LUCIEN VOORHIES.

F. CHAPUIS.
J. E. TAIREX.
M. VOORHIES,
Notary Public.

STATE OF LOUISIANA, }
City of New Orleans. }

I hereby certify the above and foregoing to be a true copy of the original act passed before me and extant and of record in the archives of my office.

In faith whereof I hereunto set my hand and affix my seal of office this 16th day of May, A. D. 1891.

M. VOORHIES,
Notary Public.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify the above and foregoing to be duly recorded in this office in vol. 3 of Mortgages, pages 567, '8, '9, 10, & 11, No. 1592, May 22nd, 1891.

ALCIDE LE BLANC,
Clerk & Recorder.

Filed Feb'y 11, '93.

ALCIDE LE BLANC, *Clerk.*

"EXHIBIT D."

STATE OF LOUISIANA, }
City of New Orleans. }

Be it known that on this eleventh day of March, in the year of our Lord one thousand eight hundred and ninety-one—

119 Before me, Joseph Duvigneaud, a notary public in and for the city of New Orleans, parish of Orleans, State of Louisiana,

duly commissioned & qualified, and in presence of the witnesses hereinafter named & undersigned, personally came and appeared Anatole A. Ker, Esq., att'y-at-law, residing in this city, herein appearing and acting in his capacity of last bidder & bearer of a certain promissory note for the sum of six hundred and eighty-seven $\frac{20}{100}$ dollars, dated New Orleans, August 1st, 1888, drawn & subscribed by F. Chapuis to his own order & by him endorsed & made payable in one year after date, with interest, at the rate of eight per cent. per annum, from date until paid; which said note is the identical one which is secured by mortgage & special hypothecation upon the following-described property, to wit:

1°. A certain plantation situated on the east side of Bayou Vermilion, in the parish of Vermilion, in this State, having a front of two arpents on said Bayou Vermilion by forty arpents in depth, together with buildings, &c., bounded west by Bayou Vermilion, east by public lands, south by property of Numa St. Julien, & north by property of Euclide Roy, together with all the stock, &c., &c.

2°. A town lot in the town of Abbeville, in said parish, being No. 33 of the plot of said town, with buildings, etc., bounded west by Jefferson St., north by Concordia St., south by lot 34, east by lot 31.

And also further secured by pledge upon a certain judgment rendered by the circuit court of the United States, fifth circuit and western district of Louisiana, in the matter of Jeanne Caroline Cave, widow, etc., *vs.* Marceline Cavaillez, widow, *et als.*, No. 33 of the docket, for $5,310.00, with legal interest from Feb'y 26th, 1884, by act passed before R. C. Stockton, late notary, in this city, on the 1st August, 1888.

And the said appearer declared that having received from Messieurs Henry Abraham & Son, a commercial firm, domiciliated and doing business in this city, a sum of eight hundred & seventy-six $\frac{13}{100}$ dollars ($876.13), amount in capital & interest of said note, together with attorneys' fees & costs of copy of said act of mortgage, he does hereby transfer the said note unto said Abraham & Son, hereby subrogating them to all the rights & actions which he has or may have against the drawer thereof, the said Francois
120 Chapuis.

Thus done and passed in my office at New Orleans, on the day, month, and year aforesaid, in presence of Messieurs Wm. H. Briede & A. R. Uccello, competent witnesses of lawful age, who signed their names hereto with said appearers & me, notary, after due reading hereof.

The original is signed—

ANAT. A. KER.
W. H. BRIEDE.
A. R. UCCELLO.
J. DUVIGNEAUD, *Not. Pub.*

A true copy.

J. DUVIGNEAUD, *Not. Pub.*

Filed Feb'y 11, '93.

ALCIDE LE BLANC, *Clerk.*

"EXHIBIT K."

STATE OF LOUISIANA,)
Parish of Vermilion.)

Be it known that on this 3rd day of June, A. D. 1889, by virtue of a commission issued from the hon. 25th jud'l district court of the State of Louisiana in and for the parish of Vermilion, in the matter of the succession of J. B. Cavaillhez and to me directed, authorizing and empowering me to sell at public auction for cash on day of sale, to pay debts, the interest in and to two certain tracts of land in said parish belonging to said succession, I, Alphonse L. Le Blanc, sheriff in and for said parish, did make said sale at the late residence of the deceased in said parish, and after having announced to the by-standers in a loud and distinct voice the terms and conditions of the sale proceeded to adjudicate property in the manner and form following, to wit:

Lot 1. The undivided one-half of a certain tract of land situated in this parish, on the east bank of the Bayou Vermilion, measuring ten arpents front by forty arpents in depth, more or less, bounded above by Lucien S. Broussard, below by Emile Rouen, east by Joseph Choate, and west by the Bayou Vermilion, together with all the buildings and improvements situated thereon, consisting of one dwelling-house, kitchen and pantry, one barn & stable, one sugar-house and mill building, kettles, one steam-engine, one cot-
121 ton-gin and building, four tenant houses, and about 500 panels fencing, adjudicated to Francois Chapuis for the price and sum of three thousand three hundred and seventy dollars, he being the last and highest bidder—$3,370.00.

(Sig.) F. CHAPUIS.

Witnesses:
GEO. W. SUMMERS.
J. A. LEMAIRE.

2nd. The undivided one-half of a tract of land situated in this parish, on the west bank of the Bayou Vermilion, measuring one arpent front by forty arpents deep, bounded north by Auguste Gallet, below by Bazile Saux and John Colomb, east by the Bayou Vermilion, and west by Sosthene Catalan, adjudicated to Francois Chapuis for the price and sum of one hundred & fifty dollars—$150.00—he being the last and highest bidder.

(Sig.) F. CHAPUIS.

Witnesses:
GEO. W. SUMMERS.
J. A. LEMAIRIE.

There being no other property known or shown to me for sale, I have closed the present process verbal, amounting to the sum of three thousand five hundred and twenty dollars, and have signed

these presents in presence of Messrs. Geo. W. Summers and J. Admis Lemaire, competent witnesses hereto subscribed.

(Sig.) A. L. LE BLANC, *Sheriff.*

Witnesses:
GEO. W. SUMMERS.
J. A. LEMAIRE.

Filed June 4th, 1889.

GEO. W. SUMMERS,
D'y Clerk Court.

Recorded in vol. 6 of Conveyances, No. 3312, page 434, June 5th, 1889.

GEO. W. SUMMERS,
D'y Clerk & Recorder.

STATE OF LOUISIANA,)
Parish of Vermilion.)

I hereby certify that the foregoing is a true and correct copy of the original on file and of record in this office.

Witness my official signature and seal of office this 2nd day of March, A. D. 1891.

GEO. W. SUMMERS,
D'y Clerk & Recorder.

Filed Feb'y 11, '93.

ALCIDE LE BLANC, *Clerk.*

122 B[1].

Peremptory Exception.

Dist. Court, P'h of Vermilion.

H. ABRAHAM & SON)
vs. } No. 540.
FRANCOIS CHAPUIS.)

Defendant, Francois Chapuis, begs leave to file this his exception to plaintiffs' action. He avers that the mortgage & promissory notes sued on — for a part of account current between plaintiffs & defendant; that said mortgages are given to secure the balance of account between them, and upon a full settlement of said account the notes and mortgages must be returned to defendant, duly cancelled.

That it is material for defendant to take the testimony by interrogatories on facts and articles to said plaintiffs, and to require with their answers a full and detailed statement of the accounts between them.

Wherefore exceptor prays that Henry Abraham and Jake H. Abraham be ordered to answer the interrogatories hereto annexed, and that plaintiffs' demand be dismissed.

JOS. A. CHARGOIS,
Att'y for Motion.

Int. 1°. Are you the plaintiffs herein?

Int. 2°. How long have you been the commission merchants of defendants, and please annex as part of the answer to this question a full and detailed account of your business transaction with defendant?

Int. 3°. Is the account which you have — to your answer to the preceding question a full and detailed statement of your account with defendant for the last four years?

Int. 4°. Do not the mortgages mentioned in your petition cover the advances which you have made to defendant and which are part of said account?

Personally appeared Francois Chapuis, who, being duly sworn, says that the aforesaid interrogatories and the answers he expects to them are material and will assist him in sustaining said exception and his defence to this action.

123 F. CHAPUIS.

Sworn to and subscribed before me this 14th day of March, 1893.

ALCIDE LE BLANC,
Clerk Dist. Court.

Filed March 14th, 1893.

GEO. W. SUMMERS, *D'y Clerk.*

C[1].

Motion.

17th Jud'l Dist. Court, P'h Vermilion.

H. ABRAHAM & SON
vs.
F. CHAPUIS. } No. 540.

Plaintiff now comes into court, through undersigned counsel, and aver that the document filed on Tuesday, March 14, 1893, herein by the defendant, and styled by him an exception, is in truth and in fact an answer to the merits of the case, traversing all the allegations in plaintiffs' petition contained, and said exception should be ordered to stand as an answer.

Wherefore movers respectfully pray that the pretended exception herein filed by the defendant be ordered to stand as an answer.

And for general relief, &c., and as in duty bound, &c.

W. A. WHITE.
C. DEBAILLON,
Of Counsel.

Filed March 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

D[1].

Motion for Continuance.

17th Jud'l Dist. Court, Vermilion Parish.

H. ABRAHAM & SON
vs.
FRANCOIS CHAPUIS. } No. 540.

To the hon. the judge of the 17th judicial district court in and for Vermilion parish:

124 Now into court comes defendant in above entitled and numbered cause, who makes oath that he is unable to proceed with the trial of said cause for the following reasons, to wit:

1st. Because his leading counsel, Judge Albert Voorhies, of New Orleans, is absent without his procurement or consent, and *as* he believes & expects to be able to secure his attendance at the next term of court; further, that he has been sick and confined to his bed for the last two weeks affected with gall-stone and unable to give evidence in said cause; that he cannot examine his books and papers in order to enable him to properly make his defence.

That he cannot safely proceed to trial under the circumstances, but verily believes and expects to be able to attend and give his evidence at the next term of your hon. court.

That this application for a continuance is not made for delay merely, but for the purpose of justice.

Wherefore he moves and prays that this his motion for continuance be granted, and that said cause be continued until the next term of this hon. court.

And for gen'l relief; and as in duty bound.

JOS. A. CHARGOIS, *Att'y.*

Before me, the undersigned authority, personally came and appeered Francois Chapuis, def't in above cause, who, being duly sworn, declares and says that the facts & allegations contained in foregoing application are true and correct.

(Sig.) F. CHAPUIS.

Sworn to and subscribed before me this 28th day of March, 1893.

(Sig.) ALCIDE LE BLANC,
Clerk of Court.

Filed March 28, '93.

GEO. W. SUMMERS, *D'y Clerk.*

E¹.

Commission to Take Depositions of Pl'ffs, with Interrogatories and Documents Annexed.

STATE OF LOUISIANA:

17th Judicial Dist. Court, Parish of Vermilion.

H. ABRAHAM & SON
vs.
FRANCOIS CHAPUIS. } No. 540.

125 To Samuel Flower or any other notary public of the parish of Orleans, *La.*, State of Louisiana, Greeting:

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine the following-named witnesses: Henry Abraham and Jake H. Abraham, of the city of New Orleans, in the above-entitled suit now pending in the 17th judicial district court in and for the parish of Vermilion, La.

Therefore we desire you that at certain times and places by you to be appointed for that purpose you cause the said witnesses to come before you, that you then and there examine them apart upon their respective corporial oaths first taken before you; that you reduce their examinations to writing and cause the witnesses to sign the same, and when you shall have taken them that you send the same, with this commission closed up under your seal, to us in our 17th judicial district court in and for the parish of Vermilion or or before the 27th day of March, 1893.

Witness the Hon. A. C. Allen, judge of said court, this 22nd day of March, 1893.

[SEAL.] ALCIDE LE BLANC,
Clerk of Court.

Exception and interrogatories, see B¹, page 172.

Depositions of Witnesses.

Depositions of witnesses produced, sworn, and examined on the days hereinafter stated, at my office, No. 41 Carondelet street, in the city of New Orleans, under and by virtue of the annexed commission issued out of the 17th jud'l dist. court for the parish of Vermilion, State of Louisiana, to take depositions in a certain cause pending and at issue between H. Abraham & Son and Francois Chapuis.

HENRY ABRAHAM, who, being duly sworn on this the 25th day of March, A. D. 1893, doth depose and say as follows:

1°. To the 1st interrogatory he saith:
I am of the firm of H. Abraham & Son, pl'ffs herein.

2°. To the 2nd interrogatory he saith:

We have been the commission merchants of defendant
126 since July 27th, 1888, up to July 31, 1891. I annex as part of my answer accounts numbered from 1 to 4, inclusive, being a full and detailed account of our transactions with defendant during that period.

3°. To the 3rd interrogatory he saith:

Yes; the accounts annexed herewith are a full and detailed statement of the business we have done with Francois Chapuis from July 27th, 1888, up to date.

4°. To the 4th interrogatory he saith:

No; one mortgage for $1,303.70 was taken in March, 1890, for the balance which Mr. Chapuis owed us in his business since July 27th, 1888, up to March 10, 1890, when the above mortgage was taken.

The other mortgage which we hold has nothing at all to do with advances made to Mr. Chapuis.

(Signed) HENRY ABRAHAM.

Sworn to and subscribed before me this 25th day of March, 1893.

SAM'L FLOWER,
Notary Public.

JAKE H. ABRAHAM, who, being first duly sworn on this the 25th day of March, 1893, doth depose and say as follows:

1°. To the 1st interrogatory he saith:

Yes; am one of the pl'ffs herein.

2°. To the 2nd interrogatory he saith:

Since July 27th, 1888. The accounts marked 1 to 4, inclusive, annexed to answer of previous witness, are full and detailed accounts or statements of our business transactions with defendant.

3°. To the 3rd interrogatory he saith:

Yes; they are full and detailed statements of our business we have done with defendant from July 27, 1888, up to date.

4°. To the 4th interrogatory he saith:

No; the mortgages we hold had nothing at all to do with advances made to Mr. Chapuis except the mortgage given by him in March, 1890, for $1,303.70, which was given for the balance he owed us on his business up to March 10, 1890.

(Sig.) JAKE H. ABRAHAM.

Sworn to and subscribed before me this 25th day of March, 1893.

127 SAM'L FLOWER,
Notary Public.

I, Samuel Flower, the undersigned notary public for the parish of Orleans, State of Louisiana, do certify that I caused Henry Abraham and Jake H. Abraham, witnesses hereinbefore named and examined, to appear before me at the time and place above named, and after publicly and solemnly swearing each separately to tell the truth, the whole truth, and nothing but the truth in answer to the annexed interrogatories I then and there proceeded to examine each separately by propounding to him the said interrogatories and reducing in my presence and that of the witnesses his answers thereto in writing with my own hand, & then caused each witness to sign his deposition in my presence. In testimony whereof I have hereunto set my hand and seal on this the 25th day of March, 1893.

SAM'L FLOWER,
Notary Public.

EXHIBIT 1.

Mr. F. Chapuis, Youngsville, La., in Account with H. Abraham & Son.

				Am't.	Days.	Nos.				Am't.	Days.	Nos.
1888.							1888.					
July 27	To S/D	1		560	400	200 00	Nov. 13	By a/s 2 B/C		101 82	291	29 68
Aug. 18	"	3	14 89				16	" " 4 "		193 51	288	55 87
	"	2	36 00	50 89	378	9 27	Dec. 24	" ½ bagg.		6 25	270	1 62
29	"	4	17 70				1889.					
	"	5	60 00	17 70	367	28 62	Jan'y 24	" a/s 5 B/C		235 10	219	51 46
Sept. 10	invoice			170 65	355	60 70	Feb'y 2	" " 2 "		101 78	210	21 42
Oct. 24	"			169 19	311	52 55	23	" " 3 "		146 62	189	27 78
Nov. 4	"			87 93	300	26 40	M'ch 13	" " 9 "		391 85	171	67 03
Dec. 21	S/D	6		125 00 }	253	43 76	Aug. 31	" balance of numbers				332 46
	invoice			48 12 }				" " " am'ts		1,409 54		
1889.												
Feb'y 2	S/D, self			60 00	210	12 60						
23	"	7		423 25	189	79 94						
M'ch 1	"	8		100 "	183	18 30						
Ap'l 25	"	9		30 "	128	3 84						
May 31	"	10		25 "	92	2 30						
June 12	invoice			390 "	80	31 20						
17	S/D	11		50 "	64	3 20						
28		13		35 "	53	1 85						
July 9		14		35 "	26	91						
Aug. 5		15										
9	" frt. & ins., bagg. to N. O.			13 46	22	28						
15	" invoice			99 40	16	1 58						
30	" S/D	16		22 "	1	2						
31	" b'l'ce of int. at 8%			73 88								
				2,586 47		589 32				2,586 47		587 32
31	" bal. our favor			1,409 54								

E. & O. E. New Orleans, Aug. 31, '89.

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Exhibit 2.

Mr. F. Chapuis, Youngsville, La., in Account with H. Abraham.

1889.		Am't.	Days.	Nos.
Aug. 31.	To bal. a/c rend	1,409.54	191	26931
Sept. 5.	" S/D, 17	30.00	186	558
" 28.	" " 18	16.00	163	260
1890.				
M'ch 10.	Bal. of int. at 8%	59.56		
		1,515.10		27749
1890.				
Jan'y 24.	By A/S, 45 B/C	165.24		
" "	" 1	46.16		
		211.40	45	949
" 10.	" bal. of numbers	.....	..	268.00
" " "	" " am'ts	1,303.70		
		1,515.10		277.49
M'ch 10.	To bal. our favor	1,303.70		

E. & O. E.
New Orleans, M'ch 8, '90.

Rec'd 5 B/C.
A/c for 5 "

Exhibit 3.

Mr. F. Chapuis, Youngsville, La., in Acc't with H. Abraham & Son.

1891.		Am't.	Days.	Nos.
May 11.	To S/D, favor M. Voorhies	30.	112	336
14.	" " " "	10.	107	107
16.	" " " self	93.	109	1013
25.	Ins. gin, 105; stable, 3.75; residence, 22.50	131.25	98	1283
26.	Record of mortgages	7.25	97	67
28.	S. D., self	70.00	95	665
Aug. 31.	To bal. int. at 8 %	2.11		
		343.61		34.71

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1891.		Am't.	Days.	Nos.
May 15.	By A/S, 4 B/C	140.37	108	1512
19.	" " 1 "	44.69	104	468
June 4.	" " 2 "	62.22	88	545
Aug. 31.	" bal. of numbers	.....	..	946
" "	" " amounts	96.33		
		343.61		34.71
Aug. 31.	To bal. our favor	96.33		

E. & O. E.
New Orleans, Aug't 31, '91.

EXHIBIT 4.

Mr. F. Chapuis, Youngsville, La., in Account with H. Abraham & Son.

1891.		Int. to July 31, '92.	Am't.	Days.	Nos.
Aug.	31.	To bal. acc't rend.	96.33	335	3216
Sept.	25.	" invoice	118.86	310	3689
Oct.	27.	S/D, favor A. Erath.	25.00	278	695
May	24.	To ins., $1,500 on gin, 105.00; ins., 250 on stable, 3.75	108.75	68	741
July	31.	Int. on Nos. 8341, at 8 %	18.53		
			367.47		8341

July 31. To am't due H. Abraham & Son.

E. & O. E.
New Orleans, Aug. 8, '92.

F[1].

Documents Offered in Evidence by Pl'ffs on Trial of Case.

Note marked Exhibit A; see page —.
Act of mortgage, Exhibit B; see page —.
Cert. of registry, " C, " " —.
Act of subrogation, " D, " " —.
Note, " E, " " —.
Act of mortgage, " F, " " —.
Cert. of registry, " G, " " —.
Note, " H, " " —.
Act of mortgage, " J, " " —.
Cert. of registry, " H, " " —.
Succession sale, " K, " " —.

131 Interrogatories, answers, and exhibits annexed. See pages —.

G[1].

Note of Evidence.

Dist. Court, Vermilion Parish.

H. ABRAHAM & SON
vs.
FRANCOIS CHAPUIS. } No. 540.

Note of evidence.

Plaintiffs' evidence.

Note, marked Exhibit A.
Act of mortgage, marked Exhibit B.
With certificate of recordation, Exhibit C.
Act of subrogation, Exhibit D.
Note, marked Exhibit E.
Act of mortgage securing said note, Exhibit F.
Together with cert. of recordation, Exhibit G.
Note, marked Exhibit H.

Act of mortgage, Exhibit J.

Togther with cost of recordation, Exhibit H.

Certified copy of adjudication to Francois Chapuis from suc. of J. B. Cavailhez, Exhibit K.

Interrogatories on facts and articles propounded to the pl'ffs by the defendant and the answers of pl'ffs thereto, together with the extracts called for by said interrogatories and annexed to said answers as parts thereof.

I hereby certify that the above and foregoing is all the evidence adduced on the trial hereof this 28th day of March, 1893, and filed on same date.

(Signed) GEO. W. SUMMERS,
D'y Clerk, Dist. Court.

H¹.

Bill of Exception.

132 17th Jud'l Dist. Court, Vermilion Parish.

H. ABRAHAM & Co.
vs.
FRANCOIS CHAPUIS. } No. —.

Be it remembered that before issue joined defendant, through counsel, filed a peremptory exception, which, upon motion, was by the court referred to the merits, and ordered to stand as an answer for the following reasons, to wit:

To which ruling of the court defendant, through counsel, objected and reserved this bill of exception; which bill, after having been submitted to opposing counsel, was duly read and signed in open court before judgment.

By the COURT: The paper termed and exception by the defendant was referred to the merits by the court, and time was granted to the defendant till the 20th day of March to file additional answer. This time was further extended twice, when the attorney for defendant stated in open court that he had no further answer to file. The case was then fixed for trial on motion of plaintiffs' counsel.

Signed in open court this 1st day of April, A. D. 1893.

A. C. ALLEN, *Judge.*

Filed April 1, '93.

GEO. W. SUMMERS, *D'y Clerk.*

P.

Bill of Exception.

17th Jud'l Dist. Court, Vermilion Parish.

H. ABRAHAM & Co.
vs.
FRANCOIS CHAPUIS. } No. —.

Be it remembered that upon the day assigned for the trial of said above entitled & numbered cause defendant, through counsel, filed an application praying for a continuance of said cause; which application is hereto annexed and made part of this bill of exception.

His honor, the judge presiding, being of opinion that the same was not well taken, denied the relief asked and ruled defendant to trial for the following reasons, to wit:

133 To all of which ruling defendant objected, and reserved this his bill of exception, which, being duly submitted to opposing counsel, was read and signed in open court before judgment.

By the COURT: The continuance was refused because the court was convinced that it was made solely for delay.

The statement made in the affidavit that the leading counsel was absent is not borne out by the record, which shows that Jos. A. Chargois is the only counsel of the defendant.

The defendant failed to disclose what he expected to prove or swear to.

The suit is on promissory notes secured by mortgage; no serious defense is made. The fixing of the case was delayed twice. Every action convinced the court that the motion was not genuine, but was made solely for delay.

Permission was tendered to take the testimony of defendant at the place where he is presently, which is in the town of Abbeville, a short distance from the court-house.

Signed in open court before judgment signed.

A. C. ALLEN, *Judge.*

Filed April 1, '93.

GEO. W. SUMMERS, *Dy Clerk.*

J[1].

Judgment.

STATE OF LOUISIANA:

Dist. Court, Parish of Vermilion.

H. ABRAHAM & SON
vs.
FRANCOIS CHAPUIS. } No. 540.

On trial of the above entitled and numbered suit, by reason of the law and the evidence being in favor of the pl'ffs and against the defendant—

It is ordered, adjudged, and decreed that the pl'ffs, H. Abraham & Son, a firm composed of Henry Abraham and Jake C. Abraham, do have judgment against the defendant, Francois Chapuis, for the sum of three thousand three hundred and ninety-two 02/100 dollars, with eight per cent. per annum interest on six hundred and eighty-seven 20/100 dollars thereof from Aug. 1, '888, until paid, and eight per cent. per annum interest on thirteen hundred and three 70/100 dollars thereof from Mar. 10th, 1890, and eight per cent. per annum interest on fourteen hundred and one 12/100 dollars thereof from May 14th, 1891, until paid, with five per cent additional on the aggregate amount thereof as att'ys' fees and for all costs of this suit.

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It is further decreed that the special mortgages given to secure the notes herein sued on, as claimed by pl'ffs and set forth in their petition, be, and the same are, recognized as existing in favor of said plaintiffs and bearing upon the following-described property, to wit:

A certain plantation situated in the parish of Vermilion, on the east side of the Bayou Vermilion, having a front of ten arpents on said bayou by a depth of forty arpents, bounded west by said Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with all the buildings and improvements thereon situated, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining, and all work stock, agricultural implements, and such other appurtenances thereto attached.

It is further ordered that execution issue on this judgment and that said property be sold in satisfaction of this judgment.

Thus done, read, and signed in open court, at Abbeville, La., on this 1st day of April, 1893.

A. C. ALLEN,
Judge 17th Jud'l Dist. Court.

Filed April 1st, 1893.

ALCIDE LE BLANC,
Clerk of Court.

K[1].

Writ of Fi. Fa, with Sh'ff's Return, Showing Adjudication of Property Seized, to Plaintiffs.

STATE OF LOUISIANA:

135 17th Jud'l Dist. Court, Parish of Vermilion.

H. ABRAHAM & SON
vs. } 540.
F. CHAPUIS.

The State of Louisiana to the sheriff of Vermilion parish or parish of Orleans, La.:

We command you that, by seizure and sale of the property, real and personal, rights, and credits of Francois Chapuis, defendant, in the manner prescribed by law, you cause to be made the sum of three thousand three hundred & ninety-two $\frac{2}{100}$ dollars, principal debt, with interest, at the rate of eight per centum per annum, from the 1st of August, 1888, in the sum of six hundred & eighty-seven $\frac{20}{100}$ dollars thereof, with like interest on thirteen hundred and three $\frac{70}{100}$ dollars thereof from March 10th, 1890, and like rate of interest on fourteen hundred and one $\frac{12}{100}$ dollars thereof from May 14th, 1891, till paid, with five per cent. additional on the ag-regate thereof as att'ys' fees; also the sum of twenty dollars, costs, as well as your own costs and charges, to satisfy a judgment rendered against said defendant, Francois Chapuis, in our said 17th judicial dist. court for the parish of Vermilion, in favor of the said plaintiff-, H. Abraham & Son.

And how you shall have executed this writ you make due return to our said court in seventy days, as the law directs.

Witness the Hon. A. C. Allen, judge of said court, this 14th day of April, A. D. 1893.

GEO. W. SUMMERS,
D'y Clerk Dist. Court.

Endorsement: Writ of *fi. fa.* to the sheriff of Vermilion parish or parish of Orleans, La. H. Abraham & Son *vs.* Francois Chapuis.

	Principal	$3,392.02
136	Interest	
	Clerk's costs	15.00
Sh'ff's	"	5.00
This writ		1.10

Received Monday, April 17th, 1893, and on the 19th April, 1893, levied this writ on the property described in the within-annexed writ of seizure marked 1, and which said notice of seizure marked A, with the returns on the reverse of the same, is herewith made part of this return, and document B, hereto annexed, is also made part of this return showing recordation of said seizure.

And after the legal delay had expired the said property was advertised for sale on the 5th day of May, 1893, in the following manner, to wit:

By advertisements composed in English and French, announcing the sale to take place at the St. Charles auction exchange in the basement retunda of the St. Charles hotel, in the first district of this city, on the said seventh day of June, 1893, at 12 o'clock m., and having first announced in a loud and audible voice the certificate of the recorder of mortgages for the parish of Orleans and the city of New Orleans, delivered on the day of sale and showing the mortgage and liens existing at the time of the sale in the name of defendant & against the said property, and also the certificate of the register of conveyances for the parish of Orleans and city of New Orleans, delivered on the day of sale, when M. Dinkelspiel being the highest and last bidder, for a/c of H. Abraham & Son, the said property was adjudicated to the said M. Dinkelspiel for account of the said H. Abraham & Son for the price and sum of thirty-five dollars ($35), payable cash; which amount of sale the purchasers retained in their hands on a/c of their judgment as plaintiffs in this case. (Document C, showing service of notice to defendant to appoint an appraiser, is hereto annexed and made part of this return.)

No other property found after due demands made of pl'ffs and defendant herein.

Charges, as detailed on the reverse hereof, still due.

Returned June 22, 1893.

137 ERNEST RICKER,
D'y Sh'ff, Parish of Orleans.

Returned & filed July 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

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Burnt record of C. H. Remick.

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Burnt Remnants of the Record of Succession of Clarke H. Remick.

138 . . . of Clark H. Remick, No. 648, . . . 5th jud'l dist. court in and for the parish of Ver . . . said parish, respectfully represents that her husband, Clark . . . th day of April, 1882, departed this life; that there are four . . . age, to wit, Frank Cavailhez, Mary Isabelle, Arthur Clement . . . petitioner further represents that it is necessary that a faithful . . . made of the active and passive of the estate in accordance to law, . . . firmed as natural tutrix of the children and an under tutor be . . . The premises considered, your petitioner prays that a faithful est . . . taken according to law, of the estate of the late C. H. Remick by Lasti . . . notary public; that a commission issue for that purpose; that you, . . . natural tutrix of the children hereinabove named, and that an un . . . and sworn according to law; and, further, prays for gen. relief an . . .

(Sig.) M. E. GERARD, *Attorney.*

Filed May 19th, 1882.
(Sig.) L—— ——.

STATE OF LOUISIANA, }
Parish of Vermilion. }

On consideration of the premises contained in the forego . . . is ordered that an order issue for the purpose stated in said pet . . . the prayer thereof. It is further ordered that, on due compliance wit . . . law in such cases made and provided, Marceline Cavailhez be appoin . . . as natural tutrix to the minors named in said petition . . . under tutor.

Given under my official signature this . . . same date.

(Signed) LASTIE BROUSSARD,
Clerk of Court.

STATE OF LOUISIANA:

25th Dist. Court, Parish of Vermilion.

. . . ession of . . . REMICK. No. 648.

. Lastie Broussard, clerk & notary public in and for the parish . . . by virtue and in pursuance of a decree granted by the aforesa . . . of the above succession, you are hereby authorized and empo . . . rative inventory of all the property, both real and personal, . . . parish or out of it, belonging to the aforesaid succes-

sion, to . . . and assisted by Messrs. Lucien S. Broussard and Joseph . . . sers, appointed by the court to assist in making the same. A . . . proceedings had in virtue hereof make to our said court, . . . signature this ninth day of June, A. D. 1882

(Sig.) LASTIE BROUSSARD, *Clerk.*

139 . . LOUISIANA, }
. . *Vermilion.* }

We, Joseph P. Lobit and Lucien S. . . . ly swear that we will appraise such property re . . . the succession Clark H. Remick as may . . . us at a fair cash valuation, to the best . . . so help us God.

(Signed) JOS. P. LOB . . .

Sworn to and subscribed before me this 12th day of Ju . .

(Sig.) L. LASTI- BROUSSARD,
Clerk, ex Officio N . .

. . . Be it known that on th . . . issued from . . . succession of Clark H. Remick . . . district court and *ex officio* notary . . . Joseph P. Lobit and Lucien S. Broussard app . . . appointed to assist me in making said estimative . . . before me at the late residence of the deceased, and after . . . appraisers in the manner required by law, I proceeded to take . . . the appraisement and valuation of the property placed thereon . . . in the following manner, to wit:

. . tract of land lying and being situated in this parish, on the . . . of the Bayou Vermilion, being the tract where the deceased reside, measuring . . . pents front by forty arpents deep, bounded above by a tract belonging . . . succession, and below by land belonging to F. R. King, east by land . . . sed vacant, and west by the Bayou Vermilion, appraised at the . . . sum of four dollars per arpent, making in the aggregate the sum . . . thousand six hundred dollars.

. ther tract of land, also in this parish, on the east side of the Bayou . . . measuring five arpents front by forty arpents deep, less . . . enty-five arpents on the back part of said tract, being that portion . . . ing east of Couley Darby which was sold to Lucien S. Broussard, . . . above by said Lucien S. Broussard, below by the above-described . . . st by said Couley Darby and Lucien S. Broussard, and west . . . then appraised at the price of four dollars per arpent, . . . the sum of six hundred dollars. . . . other tract of land lying and being situated in this parish, on . . . eigneur, being the undivided one-half of irregular section No. . . . S., R. 4 east, and No. 62, T. 12 S., R. E., 31st degree of north latitude, . . . ning (147.60 and 350 acres), in all four hundred and ninety . . . acres, the other undivided half of which belong- to J. T. Lobit, the . . . of the succession being appraised at $4 per acre, aggregating the . . . of eleven hundred and ninety-five $\frac{20}{100}$ dollars

140 . . . one other tract of land in said parish, on the east side of the . . . tion, being the undivided one-half of twenty

superficial arpents, . . . north and east by A. L. Dyer, south by Mrs D. Roy, & west by the . . Vermilion, appraised at forty dollars . . . Three superficial and undivided arpents of woodland situ . . the parish of Iberia & being in the community tract of the . . . family in Bull island, near Lake Peigneur, appraised . . .

. . small tract of woodland lying and being situated in the . . . Lafayette, on the east side of the Bayou Vermilion, containin . . . icial arpents, more or less, bounded above by Ursin I . . . by Jean Comeaux, east by Desire O. Broussard and . . . Vermilion, appraised at the price and sum of two hun . . .

. . . ided one-half of a certain lot of ground in lot . . . of the town of Abbeville, figuring as lo . . . surveyor on file in the succession files of . . . five feet front on Rue de Port . . . ndred and sixty-seven $\frac{65}{100}$ . . . tern portions of . . . lines both of said lots together, being bounded N . . . south by Mrs. A. D. Martin and west by Gerard Decuir . . . in all the buildings & improvements situated thereon app . . . dred dollars; this property is figuring in the name of and is claim . . . Marceline C. Cavailhez, widow of deceased.

. other tract of land situated in this parish on the west bank of the . . . measuring one arpent front by forty arpents, bounded above by Angus . . . below by the heirs of C. Colomb, east by the Bayou Vermilion & west by . . . appraised at four dollars per arpent, making the sum of one hundred and . .

One dwelling-house and attachment, being the last residence of the deceased . . . sed, with the kitchen, at the price and sum of one thousand five hun . .

One crib, with stables, appraised at the price and sum of four hundred . . .

One cotton gin, with steam boiler, engine, and press with the buildings . . . raised at one thousand two hundred and fifty dollars.

One sugar-house, furnace, sugar mill, steam engine, coolers . . . fixtures attached & belonging thereto, and buildings used a*bd* att . . . appraised at the price of two thousand dollars, . . . other buildings used by hands on the place appraised all together . . . the price and sum of six hundred dollars.

141 . store building, at two hundred dollars; . . . undivided one-half interest in three buildings on Lake Peigneur, . . . West tract, appraised at one hundred dollars.

. vided one-half interest of about seven hundred . . .

. . plank fence, appraised at one hundred and five d . . .

. . fifteen hundred pan*a*ls of fencing on the home place, . . . at thirty-five dollars per one hundred panels, making . . . four hundred and fifty dollars.

. one chicken coop, at ten dollars.

. bedstead, appraised at twenty dollars.

. bureau with marble slab, at fifteen dollars.

One bottom & 1 rocking chair, at five dollars.

. eating table, at ten dollars.

. trunk, large, at ten dollars.

. book-case & secretary, at fifteen dollars.
. . of books, appraised at one hundred dollars.
. . brackets, at two dollars.
. . six pictures, at six dollars.
. . ing-glass, at two "
. . machines, at thirty and ten dollars.
. . table, at three dollars.
. . . " two "
. bedstead, at three dollars.
. . . " fifty cts.
. . . " nine dollars each.
. . utensils & crockeryware, at . . .
. . . at fifty dollars,
. . . and five sets of greas
. . . creole mules, at three hundred, and . . . cows & calves, appraised at fifteen dollars per . . . cows, at twelve dollars per head.
. . . at five dollars.
. . . at twenty dollars.
. . horses, at ten dollars.
. . horses, one at fifteen and three at eight dollars.
142 . American horse, at forty dollars.
. grey horse, at twenty-five dollars.
. following items are claimed by the widow as having been received . . . her father, viz: . . . steads, beds, & beddings, appraised at forty-three dollars.
. small tables, appraised at two dollars.
. old rocking chair, " " "
. . armoir-, appraised at —.
. . reaux, " at five dollars.
. . washstands, at one dollars.
. looking-glasses, at five dollars.
. doz. spring-bottom chairs, at $2.50.
. sofa, at ten dollars.
. center table, at five dollars.
. . piano, at seventy-five dollars.
. . . at two dollars.
. old chairs, at 50c. *cents* each.
. old sofa, at —.

The following items are appraised as belonging to the succession:

. saddle, appraised at twenty dollars.
. flat " " " five dollars.
. blacksmith shop & tools, &c., at twenty-five dollars.
. old steam machineries & boiler, at forty dollars.
One grindstone, at five dollars.
Fifteen empty hogsheads, at $2.50 each.
Three " barrels, at $1.00 "
One old wagon, at twenty dollars.
One plantation bell, at five dollars.
One old cistern, at " "
The growing sugar cane & corn crop, valued — two thousand

. . . ndred dollars, after deducting the probable expenses of raising. . . .

The following claims were shown to be due the succession by . . . marked A, at page 312, the ledger book marked . . . Petit Ledger, marked C.

143 . amount against Edmond T. Broussard for . .
. " " Severin Minan " .
" " Gilma Mouton " .
" " Francis Hebert " .
. . . Baptiste Benoit for .
. . . Severine Guidry " .
. . Joseph Bonhomme " .
. . Numa Pradier " .
. . B. F. Flanders " .
. . Nicholas Blanc " .
. . Edmond Washington " .
. . Jupiter Gadson " .
. . Wm. Montet " .
. . Emedis Broussard " .
. . Alexis Gilbert " .
. . Ursin Michel " .
. . Aurellien Trahan " .
. . Dominique Claverie " .
. . Albert Maxwell " .
. . Remy Broussard & mother " .
. . Dr. W. D. White " .
. . Lucien S. Broussard " .
. . Henry Brownson " .
. . Bazile Saux, balance.
. . Eugene Bodoin, balance considered worthless.
. . Pierre Gallet.
. . Louisa Wise, balance.
. . Dupre St. Julien, "
. . Desire O. Broussard.
. . Elijah Marrie, balance.
. . Emile Baudoin, charge Remy B. . . .

of D. Claverie, dated Febr'y 2nd, 1880, for four notes dr . . . B. Corrige to the order of C. H. Remick, each for the sum of twenty-five dollars, bearing mortgage on a tract of la . . . aid Remick, payable in one, two, three, and four years from the 6th Nov., 1 . . .

by D. Frank & wife, amount not known, . . . no other prop-
144 erty known, shown, or designated to us . . . appraisement we have closed the same, amounting to the su . . . teen thousand two hundred and forty $\frac{30}{100}$ dollars and . . . losing hereof Mrs. Marcelline C. Cavailhez stated to the notary . . . sers and in presence of the subscribing witnesses that she lai . . . the home property for the sum of seven thousand dollars . . . of a donation by her father & mother of a note for that . . . in the donation and the marriage contract between . . . husband, dated on the 19th of August, 1869; and . . . claim under said donation & contract . . .

the purchase price of said home place where . . . make the following recapitulation, to wit:
. . of real estate.
. . personal property buildings.
. . . accounts & claims.
. . . estate & improvements . . .
. . . Roy.
. . . my Broussard in settlement.
. . . R. Tolsen.
. . . Solomon Wise, note.
. . . " " a/c.
. . . Isaac " "
. . . Dr. W. D. White, amount not known.
. . G. B. Shaw.
. . Lastie Broussard.
. . J. O. Lege, amounts now known.
. . Miller Lyons & Co., amounts now known.
. . F. P. Gravely, " " "
. . Miller Lyons & Co., " " "
. . J. A. Brookshier, " " "
. . A. D. Laborde, am'ts not known.
. . Wm. Cade, " " "
. . J. J. Abadie, " " "
. . Bazile Saux note.
. . " " a/c.
. . G. W. Scranton.
145 . . Emile Broussard.
. . Aug. Picard.

. . Thus done and signed in presence of Messrs. Joh . . . ick and Bazile Saux, competent witnesses of . . . residents of said parish, who have signed with . . . notary, on the date first above written.

(Signed) . . EPH P. LOBIT.

Witnesses:
(Signed) J. H. REMICK.
. . ed) LASTIE BROUSSARD,
Clerk, ex Officio Notary.

S . . . filed June 13th, 1882.
(Signed) LASTIE BROUSSARD, *Clerk* . . .

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify that the value of the property . . . of Clark H. Remick, in which the minors Frank Cavailhez, . . . their — Clement and Marcelline Elrita Remick, children of the . . . Remick, have a community interest with their surviving mot . . . Cavailhez, amount- to the sum of fifteen thousand four hun . . . subject to the widow's claim on the home place for the sum . . . based upon a donation by her father and mother of . . . described in the act of marriage contract and dona . . . office, and that the value of the

separate property . . . to the sum of eight hundred and forty 10% d . . . inventory on file and of record in this office, . . . 13th day of June, A. D. 1882.

(Sig.) LASTIE BROUS . . .

. . 21st, 1882, in Book F of Mortgages, page . . .

LASTIE BROUSSARD,
Clerk & Recorder . . .

I, Marcelline C. Cavailhez, . . . lemnly swear that I will . . . the duties . . . help me God.

(Sig.) MARCELLINE C. CAV . . .

STATE OF LOUISIANA, }
Parish of Vermilion. }

To all to whom it may concern, Greeting:

Be it . . . clerk of the district court in and for the parish of Vermilion, . . . this day, by virtue of the powers in me vested by law, appointed and . . . Marcelline C. Cavailhez as natural tutrix to the minors Fra . . . abelle Remick, Clement Arthur Remick, and Marcelline Elrita Rem . . . marriage heretofore existing with Clark H. Remick, her deceased spou . . . the said Marcelline C. Cavailhez, as natural tutrix, aforesaid, with . . . horities contemplated by the laws of this State in such case made . . . vious requisites of the law having been complied with, know ye, therefore, . . . must be given to all the legal acts of the said Marcelline C. Cavailhez.

. . . testimony whereof I have hereunto signed my name, officially, in cham . . . isiana, this 30th day of June, A. D. 1882, and filed same date.

(Signed) LASTIE BROUSSARD,
146 *Clerk of Court.*

. TATE OF LOUISIANA, }
. *rish of Vermilion.* }

I, John H. Remick, of the State of Louisiana, . . . milion, do solemnly swear that I will well and faithfully discharge . . . and singular the duties and functions incumbent on me as under tutor to . . . ick, Mary Isabelle Remick, Clement Arthur Remick, and Marc . . . marriage heretofore existing between Clark H. Remick, dec . . . Marcelline C. Cavailhez, to the best of my abilities and understanding, . . . God.

(Signed) JOHN H. REMICK.

Sworn to and subscribed . . . 1880, before me—

LASTIE BROUSSARD,
Clerk of Court.

. . LOUISIANA, }
. . *Vermilion.* }

To all whom it may concern, Greeting:

Be it . . . Lastie Broussard, clerk of the district court in and for the pa . . . of Louisiana, have this day, by virtue of the powers in me vested, . . . hereby appoint- and confirm- John H. Remick as under tu . . . C. Remick, Mary Isabelle Remick, Clement Arthur Remick, and . . . Remick, issue of the marriage heretofore existing between Clark . . . Marcelline C. Cavailhez, his surviving spouse, hereby vesting him . . . ick, as under tutor aforesaid, with all the powers and authori . . . the laws of this State in such case made and provided—the . . . the law having been complied with—know ye, therefore, that . . . must be given to all the legal acts of the said John . . . capacity.

In testimony whereof I have hereunto signed . . . chambers, at Abbeville, Louisiana, this 30th day of . . . date.

(Signed) LASTIE BROUSSARD, *Clerk.* . .

. . . No. 648.

. . . D. C.

. . . judge of the 25th judicial dist . . . petition of Marcelline C. Cavai . . . dec'd husband Clark H. Remick . . . debts due by said succession . . . the same, and . . . survivor in community and the heirs of . . . shows that a family meeting is necessary . . . interests of the minors, touching the dispositions . . . to fix the terms and conditions of sale as regards . . . case a sale to be recommended. Wherefore she prays that . . . Broussard, clerk of court and notary public, directing . . . a family meeting in the interests of the minors, Frank C. . . . Isabelle Remick, Claiment
147 Arthur Remick, and Marcelline . . . purpose of recommending what disposition shall be made of . . . succession and to fix the terms and conditions of sale in case . . . necessary, said meeting to be composed of Manuel De La . . . of said minors, and Messrs. W. B. White, Gus Godchaux, G. . . . and Lucien S. Broussard, friends in default of other . . . of them, and to be attended by John H. Remick, under tu . . . she prays for general relief, &c.

(Signed) O'BRYAN & WHITE,
Att'y- for . . .

. . January 31st, 1883.

(Signed) LASTIE BROUSSARD, *Clerk.*

. OF LOUISIANA, }
. *of Vermilion.* }

Let the prayer of the foregoing petition be granted. It is therefore . . . dge- and decreed that an order issue, directed to the undersigned, . . . public, authorizing and empowering him to convoke a family . . . the persons and for the purpose stated in said pet . . .

Given under my official signature this 13th day of January, A. D. 1883, and filed on . . .

(Sig.) LASTIE BROUSSARD,
Clerk of Court.

STATE OF LOUISIANA:

25th Jud'l Dist. Court, Parish of Vermilion.

. cession of . H. REMICK. No. 648.

Lastie Broussard, clerk, *ex officio* notary public in and . . . Greeting:

— and in pursuance of a decree granted by the . . . the matters of the above succession, you are hereby authorized . . . convoked before you on the first day of February, A. D. 1883, . . . be composed of Messrs. Manuel De Lano, nearest relative; . . . Godchaux, G. B. Shaw, H. B. Lyons, and Lucien S. Broussard, . . . their relatives, or any five of them, for the purpose of recommending . . . shall be made of the property of said succession and to fix the . . . in case a sale thereof be deemed necessary in the inter . . . K. C. Remick, Mary Isabelle Remick, Clement Arth . . . lline C. Remick, issue of the marriage heretofore . . . deceased, and Marcelline C. Cavailhez, surviving sp . . . be attended by John H. Remick, under tutor . . . had in virtue hereof, make to our said evi . . . 31st day of January, A. D. 1883.

(Sig.) —— ——.

. . . NA, }
. . . }

We, Manuel De Lano, Wm. D. . . . Henry B. Lyons, members of . . . 25 judicial district court, . . . (or affirm) th . . .
148 before me this first day of February, A. D. 1883.

(Signed) —— ——,
. . . *blic.*

. . LOUISIANA, }
. . *Vermilion.* }

Be it known that on this the 1st day of February, A. D. . . . pursuance of and order issued from the hon. the 25th judicial district . . . in and for the parish of Vermilion, bearing date of January the 31st, A. D. 188 . . . authorizing and empowering me to convoke before me a family meeting for the . . . deliberating upon the interests of the minors Frank C. Remick, Mary Isabelle . . . Arthur Remick, and Marcelline Elrita Remick, issue of the marriage heretofore . . . Remick, dec'd, and Marcelline C. Cavailhez, surviving spouse, touching . . . said minors, and for the purpose of recommending what disposition shall . . . the succession of Clark H. Remick and to fix the terms and conditions of . . . be deemed advisable, I, Lastie Broussard, clerk of court *ex offi* . . . for said parish, duly commissioned and qualified as such, have convoked . . . mily meeting at the late residence of the deceased in said parish. Said . . . ended by J. H. Remick, under tutor, was com-

posed of Messrs. Manuel De . . . Granville B. Shaw, Gustave Godchaux, and Henry B. Lyons, the former being the . . . relatives, and the others, friends of said minors, members appointed for that purpose, . . . duly sworn by me, did deliberate and advise as follows, to wit:

That it is to the . . . nifest advantage of said minors that their interest in the property of the community . . . deceased father, Clark H. Remick, be sold at public auction to the la . . . after the formalities of the law shall have been complied with. John . . . said minors, being present, approves of these deliberations.

Thus do . . . first above written, after due reading of the whole.

(Signed) G. B. . . .
H. B. LYONS.
M. DE LANO.
G. GODCHAUX.
J. H. REMICK.

(Signed) LASTIE BROUSSARD,
Clerk, ex Officio Notary Public.

To the hon. the judge of the 25th judicial district court in and f . . . ilion, State of Louisiana:

The petition of Marcelline C. Cavailhez, . . . administering the succession of her deceased husband, Clark . . . respect- represents that a sale of the property of said succession is ne . . . of obtaining funds with which to pay debts due by the same, an . . . also necessary for the purpose of affecting a partition and settlement . . . as survivor in community and the heirs of said estate, all of
149 . . . avers that she individually is a creditor of said succession f . . . sum of seven thousand dollars, as set forth in the estimative . . . said succession. She further avers that there are various other . . . a list of which is appended to said inventory, which . . . refers to and makes part of this petition. Petitioner . . . funds belonging to said estate with which she . . . other represents that pursuant to an order . . . ting composed of Messrs. Manuel De . . . hite, G. B. Shaw, Gustave Godchaux, and . . . said minor heirs of said succession . . . 1883, before Lastie Broussard, . . . for the purpose of advising . . . touching the best disposition . . . and to fix the terms and . . . of the law shall have been complied . . . tutor to the minors, was present at and . . . meeting; all of which will be seen by reference . . . ting now on file before this honl. court.

Petitioner . . . also desire to have the property of the succession . . . nded by said family meeting as regards her interests the . . . unity. Wherefore she prays that the proceedings of said family . . . homologated and approved. She also prays for an order autho . . . the property of the succession of Clark H. Remick for cash, . . . G. B. Shaw, sheriff, at the late residence of the deceased, after . . . in the manner required by law, and she prays for all other . . . and for general relief, &c.

(Signed) O'BRYAN & WHITE,
Att'ys fo . .

. . OF LOUISIANA, }
. . *of Vermilion.* }

Before me, the undersigned authority, person . . . appeared Walter A. White, attorney for Marcelline C. Cavailhez, . . . being duly sworn, deposes and says that the judge of the . . . district court is now absent from the parish of Verm . . .

(Sig.) W. A. WALTER.

Sworn to and subscribed before me on this . . . February, A. D. 1883.

(Signed) LASTIE BROUSSARD,
Clerk of Cou . .

. . TE OF LOUISIANA, }
. . *sh of Vermilion.* }

The foregoing petition, annexed affidavit, . . . mentioned and attached to the estimative invent . . . ordered, adjudged, and decreed that the deliberations . . . ting mentioned in said petition be, and the same are . . . approved. It is further ordered that the property of the . . . Clark H. Remick, including the interests of the surviving wid . . . blic auction, to the last and highest
150 bidder, for cash, to pay . . . order that an order issue directed to G. B. Shaw, Esqr, . . . authorizing and empowering him to sell said property . . . with.

Given under my official signature, at office, this 13th . . . A. D. 1883, and filed same date.

(Sig.) LASTIE BROUSSARD.

STATE OF LOUISIANA:

District Court, Parish of Vermilion.

. . uccession of . . LARK H. REMICK. No. 648.

To G. B. Shaw, Esqr., sheriff in and for said parish . . . granted in the matter of the above succession by the . . . trict court for said parish:

You are hereby authorized . . . public auction to the last and highest bidder . . . perty belonging to said succession, including . . . and how you shall executed this order, you . . . in the manner required by law.

Witness . . . court this 3rd day of February, A. D. 18 . . .

(Signed) LASTIE BROUSSARD, *Clerk* . . .

. . . NA, }
. . . }

Be it remembered that . . . thousand eight hundred . . . issued from . . . der for cash to pay debts, all the property . . . the widow therein, after due advertisement . . . for said parish in pursuance of said order have . . . ation in the "Meridional," the official journal of said . . . 24th, 1883, and March 3rd, 1883, and on this

date first above . . . residence of the deceased in this parish for the purpose of selling . . . having announced to the by-standers, in a loud and distinct voice . . . tions of said sale, I proceeded to adjudicate property in the manner and . . . to wit: One tract of land lying and being situated in this parish on the east . . . Vermilion, measuring five arpents front by forty arpents deep, less abo . . . arpents, superficial area, on the back part of said tract and east . . . ich have been sold to Lucien S. Broussard, bounded above by . . . below by the home place proper of said deceased, C. H. Remick, ex . . . Broussard and Coulee Darby, and west by the Bayou Vermilion . . . our as D. Miller, P. Lytt Lyons, and Branch M. King, of the . . . embers composing the commercial firm of Miller, Lyons, & Co. herein . . . anch M. King, one of the members of said firm, for the price and sum . . . dollars, they being the last and
151 highest bidder at the price, the . . . succession of the late firm of Burbridge, Miller & Co. and the ow . . . on the 17th day of May, 1881, with interest, and secured by mortgage . . . and fully described in and identified with said act of mortg . . . the amount of the price of adjudication to be applied on said . . .

(Sig.) MILLER & CO.,
Per BRANCH M. KING.

Witness-:
(Signed) . . BROUSSARD.
JOHN H. REMICK.

One tract of land in said parish on the east side of the Bayou Vermilion . . . the undivided one-half of twenty superficial arpents, bounded north . . . Dyer, south by Mrs. D. Roy, & west by the Bayou Vermilion adju. . . . and Washington for the price and sum of fifty dollars . . . the last and highest bidder.

his
(Signed) EDMUND x WASHINGTON.
mark.

Witnesses:
(Signed) LASTIE BROUSSARD.
ALCIDE LE BLANC.

. . . tract of land lying and being situated in this parish, in Lak . . . and being the undivided two-thirds of irregular section No. 37, T. . . . and No. 62 T. 12 S., R. 5 E. in the 31st degree of north latitude, the . . . in the aggregate four hundred and ninety-seven $\frac{60}{100}$ acres, . . . being now the property of John Remick, adjudicated to John . . . the price and sum of two thousand and three hundr . . . ficial and undivided arpents of woodland situ . . . being in the community tract of the Le Blanc f . . . Lake Peigneur, which was sold with and adj . . . to the same party, they having been offered and . . . the said Remick at the price above stated, . . . with $\frac{2}{3}$ of the improvements.

. . . MICK.

Witnesses:
LASTIE BROUSSARD.
H. . . . .

. . . land lying and being situated in . . . Vermilion, containing . . . ling and being situated in this parish . . . being the tract whereon the deceased last . . . by forty arpents deep, bounded by a tract . . . sold and adjudicated to Miller, Lyons & Co. below by . . . lands supposed to be vacant and west by the Bayou Vermilion . . . improvements situated thereon and appertaining thereto and con . . . lling house and all the household furniture, one corn crib, one cotton gin, steam-engine, boiler & press, with the buildings, one . . . mill, steam-engine, boiler & coolers and fixtures and appurtenances, . . . buildings occupied by hands on the place, one-
152 story building, about fifty pannels of fencing, one chicken coop, one lot of kitchen utensils, . . . case, secretary, and desk; one mule cart, seven plows, two harrows . . . three pairs of oxen, three American & two creole mules, the . . . six plow horses, one American horse and one creole horse, one blacksmith-shop building & tools, one old steam boiler & machi . . . stone, one old wagon, one plantation bell, one old cistern . . . to said tract, and one tract of land on the west side of the Bayou Vermilion, measuring one arpent front by forty arpents de . . . above by Auguste Gallet, below by the heirs of C. Colomb, east . . . Vermilion, and west by . . . , all offered for . . . lot and adjudicated to Marcelline C. Cavailhez for the price . . . ten thousand and five hundred dollars, she being the last . . . highest bidder.

(Signed) MARCELLINE C. CAVAILHEZ.

Witnesses:

(Sig.) LASTIE BROUSSARD.

. . .

. . . all of the above property was adjudicated to the purchasers . . . the same of a reasonable time. Under the instructions of . . . the rifle, the hogs, and the saddle inventoried were not off . . . there being no other property known, shown, or designated to me f . . . the present process verbal of sale, amounting to the sum of for . . . twenty dollars, and have signed the same in presence of the sub . . . competent for that purpose.

(Signed) G. B. SHAW, *Sheriff.*

Wit . . . :

(Signed) LASTIE BROUSSARD.
W. B. WHITE.

Tableau of Debts and Charges in the Succession of Clark H. . . .

Gross active mass.

Amount of probate sale.

Profits from gin for year 1882.

Net proceeds sugar & cotton crops, year 1882, all expenses incurred therefor deducted.

. . collected from D. Claverie after settlement.
. . " " " Faulk " "
. . " " Aurellien Trahan.
. . " " Alexis Gilbert.
. . " " Severin Minan.
. . " " Severine Guidry.
. . " Ed. Washington.
. . Crib.
153 ble estate.
brought f'w'd.
. . building vault.
. . coffin, lime, &c.
. . chaux burial clothes.
. . dchaux cash paid digging grave.

Law charges:

E. J. Addison, printing fees.
G. B. Shaw, sheriff, making sale.
O'Bryan & White, att'ys' fees.
Lastie Broussard, clerk & not. fees.
Amount reserved for future costs &

Last illness:

Dr. G. W. Scranton.
Dr. W. D. White.
Isaac Wise, drugs & medicines.
Rory & Scranton, " "

Privileged & mortgaged:

Balance to be applied to payment of special privileges & mortgages.
John A. Brookshier, on one cart.
. . . sugar & cotton-gin machinery.
. . . Miller, Lyon & Co., note for $1,500, secured by mortgage on land.
. . . the house place, which sold for $1,000.00, and which was . . . Miller, Lyons & Co., they retaining the purchase price . . . Broussard, administrator of the succession of C. J. F. Broussard note, . . . July 27th, 1882, July 27, 1883, July 27, 1884, each for $83.33⅓, secured . . . mortgage & vendor's lien on land on west side of the Bayou Vermilion . . . sold for $170.00.

. . . lance to be applied to the payment of the following:
154 . ial privileged and mortgage claims, viz: . . . C. Cavaillhez, widow of C. H. Remick, a note for $7,000.00 secured . . . tgage with vendor's lien & privilege on the plantation on . . . Vermilion, being a note in favor of the late Bte. Cavaillhez . . . donated & endorsed as dower to said widow Remick . . . note, with eight per cent. per annum interest from . . . 1882, to March 13th, 1883, amounting to $7.4 . . .

. . ilhez, widow C. H. Remick, subrogated to F. C. . . . note for $2,000 00, with eight per cent. per . . . from June 5th, 1875, to March 13, 1883.

. . ortgage on Lake property and on—

. . antation on Bayou Vermilion.

. . . widow C. H. Remick, subrogated to F. . . . note for $1,500.00, with eight per cent. . . . from June 5th, 1875, to March 13th . . . on Lake property and on . . . milion.

. . . of succession, there are and will be . . . ux account.

. . se, note for $234.51, with 8 % interest from March 3, . . .

. . ise, account.

. . Dupuy, account.

. . . Laporte.

. . Marie M. Colomb, note.

. . Tolson, account.

. . L. Broussard, account & note.

. . Lutzenberger, acc't.

. . my Broussard, acc't.

. . Abadie, acc't.

. . Cade, acc't.

. . A. Brookshier, acc't.

. . Gravelly, notes.

. . Gravelly, notes.

. zile Saux, acc't.

. eeler & Wilson Mfg. Co.

. Romero, balance acc't.

. G. Maxwell.

. Picard, balance acc't.

155 . cien Broussard, balance acc't.

. Leguinnec, "

. R. King, "

. Baquet, "

. rish of Vermilion, judgment.

. acc. Wise.

. Lastie Broussard, acc't.

. Dr. G. W. Scranton, acc't.

. Dr. W. D. White, acc't.

. Dr. White & Chevis, balance acc't.

. Miller Lyons & Co., balance on note.

. J. T. Broussard, adm'r, balance on note.

. . payment of which there are no funds.

· laims & expenses incurred for the growing and . . . of 1882 have not been carried thereon, the . . . from the proceeds of said

crops leaving the . . . No. 3 of gross active mass on page 1, Th . . . item No. 1st on page 3 and approved . . . submitted (signed) O'Bryan & White . . . judge of the 25th judicial district, . . . sh of Vermilion, La Mar . . . tutrix administering . . . which purpose it is necessary that . . . be had and given. Wherefore she prays that the . . . and given by publication in the "Meridional," New . . . by law that the minors in said succession be notified . . . under tutor, and that after all due formality and delay . . . be duly homologated and approved & she ordered to pay and . . . with, & she prays for general relief, &c., &c.

(Signed) O'BRYAN & WHITE . . .

Filed Oct. 11th, 1883.
(Signed) LASTIE BROUSSARD, *Clerk* . . .

STATE OF LOUISIANA, }
Parish of Vermilion. }

On consideration of the premises contained . . , it is therefore ordered, adjudged, and decreed that the notice required . . . the accompanying tableau be published during ten days in the "M . . . ournial" of said parish. It is further ordered that John H. Remick . . . minors interested in said succession be cited in the manner . . . ven under my official signature this 11th day of October, 156 A. . . . Filed same date.

(Signed) LASTIE BROUSSARD, *Clerk.*

STATE OF LOUISIANA:

Parish Court, Parish of Vermilion.

Succession of CLARK H. REMICK. No. 648.

To John H. Remick, under tutor to the minors Frank . . . Clement, . . . Arthur Remick, of said parish, by virtue of a decree of . . . aforesaid granted in the matters of the succession, entitled . . . :

You are hereby cited to appear before our said court . . . . at . . . town of Abbeville, to show cause why the tableau of classification . . . ges, filed by the tutrix administering said succession . . . for homologation should not be homologated and approved . . . tion thereto, in writing, in the office of clark of . . . said courthouse, if any you have, within ten days from . . . whereof.

Witness the Hon. John Clegg, judge of said court . . . day of October, A. D. 1883.

(Sig.) LASTIE BROUSSARD, *Clerk* . . .

& filed Nov. 7, 1883.
(Sig.) ALCIDE LE BLANC, *D'y* . . .

In the District Court of Vermilion Parish.

Succession of . . . H. REMICK. No. 648.

. . . honorable the judge of the 25th judicial district . . . parish of Vermilion, State of Louisiana:

The petition . . . of Vermilion, acting herein through Howard Ho . . . jury of said parish, with respect shows that . . . ditor of the succession of said Clark H. . . . duly recorded in the mortgage office, . . . ing six hundred and fifty dollars, wit . . . hundred by this hon. court, at the . . . Cavailhez, tutrix, administering . . . publication of her tableau . . . places opponent, as . . . on said tableau diver . . . a mortgage creditor for $7,493.06 . . . in favor of J. B. Cavailhez, given her as . . . arcelline is not a creditor of said succession for . . . id note, and the debt evidenced thereby because exting . . . having become the property of said Clark H. Remick, because . . . preserved as to said debt by making the necessary re-
157 cordation . . . mortgage if it ever existed, is long since prescribed by the lapse of ten . . . said Marcelline has not had recorded in proper manner any cla . . . rights against her said husband, and because said was not gi . . . legally received by her as such opponent oppeses the items in favo . . . Marcelline Cavailhez as subrogated to the rights of F. C. Remick . . . cession one for the sum of $3,243.49, and the other for the sum . . . nced by two notes in favor of said F. C. Remick, as it is said, for . . . notes are extinguished by the prescription of five years and also . . . gment, and said succession is no longer liable or indebted . . . notes. Wherefore opponent prays said tableau be amended . . . laims of said tutrix Marcelline Cavailhez (both as privileged and . . . of said succession) above opposed and by placing opponent on said . . . privileged creditor for the sum of six hundred and fifty dollars, said judgment allowed, and by ordering the same paid and . . . said tableau be duly homologated, and opponent prays . . . special relief in the premises, &c., &c.

(Sig.) W. W. EDWARDS, *Of Counsel*. . .

Filed Nov. 12th, 1883.

(Sig.) LASTIE BROUSSARD, *Clerk*.

Dist. Court, Vermilion Parish.

. uccession of . H. REMICK. No. 648.

To the honorable the judge of the twenty-fifth judicial dis . . . tion of opposition of Albert D. Laborde, a resident of Vermilion . . . respect- represents: That the tableau filed in the matters of . . . numbered succession is correct in this, that petition . . . thereon as a privilege- creditor for the sum of fourteen 70/100 . . . for groceries and provisions furnished to said Remick . . . months of his life.

Wherefore petitioner prays that said . . . carrying petitioner's

claim as a privileges claim thereon for . . . dollars, and that as thus amended the same be homologated . . . and general relief.
(Signed) SMEDES & WHITE, *Att'ys.*

—led No. 16th, 1883.
(Signed) LASTIE BROUSSARD, . .

STATE OF LOUISIANA :

158 District Court, — Vermilion.

. . . ssion of . . REMICK. No. 648.

. . . *of Evidence on Trial of Oppositions* . . .

Extracts from " Meridional " newspaper . . .

. . . publications required by law, . . .
. . . H. Remick, marked . . .
. . . thereon endorsed . . .
. . .
. T. R. Tolson, marked . . .
" S. Wise, "
" I. Wise, "
" E. Romero, "
" D. Clavery, "
" F.S. Lietzenberger, "
" G. W. Scranton, "

. . . mortgage note dated Aug. 19th, 1869, payable to bearer, & signed Clarke H. . . . Remick, and for the sum of $7,000, marked . . . Certified copy of the act of mortgage of same date as above, being 1163 . . . ook C of Mortgages, page 482, in favor of Bte. Cavailhez, marked . . . Certified copy of act of donation from Bte. Cavailhez & Ernestine Diaz to Marcelline, with all indorsements thereon, marked . . . note from F. C. Remick for $2,000.00, dated June 5th, 1875, signed by Clark H. Remick, & paraphed by notary, marked . . . note from F. C. Remick for $1,500.00, signed C. H. Remick & J. T. Lobit . . . ne 5th, 1875, and paraphed *Ne varietur* by notary, marked . . . Certified copy of act of mortgage from F. C. Remick, dated June . . . with certificate of Leo Perret, recorder, thereto attached, & certificate of . . . ing its registry in book of mortgages, marked V . . . certificate to be furnished from Clark H. Remick to . . . 13th, 1880, marked W. Certified copy of act No. 2981 of . . . Book F, p. 582, to be furnished, marked X.

. . . BROOKSHIER, being sworn, says his claim for $70.40 privilege . . . is correct & due me.
(Signed) J. A. BROOKSHIER.

159 . . . GODCHAUX, being sworn, says · Charges in my favor under . . . are correct. I furnished the clothes & paid for digging of the . . . favor under head of ordinary claims is correct, I having fu . . . charged in my bill already in evidence.
(Signed) G. GODC . . .

. D. WHITE, being sworn, says: The item in my favor under . . . is correct. I was the physician of Mr. Remick during his last illness . . . in as conculting physician. The item in my favor under . . . is correct, a balance due me after settlement of old accou . . . the firm of White & Chevis.

(Signed) W. D. WHITE.

. . . of probate sale in suc. C. J. F. Broussard, dec'd, sh . . . ereof and adjudications of land to C. H. Remick, marked . . . Certified copy of act No. 2737 of mortgages re . . . 267, with certificate showing recordation of . . .

ISAAC WISE, being sworn, says: To the . . . favor under . . . of last illness is correct . . . ordinary creditor of Mr. Remick. (Sig.

. . . BROUSSARD, being sworn, says:

The amount . . . rendered the succession is fifty . . . him, against it is sixteen 56/100 dol . . . over on behalf of opponent . . . furnished him during . . . its for running gin inst., 1882 . . . nett proceeds of cotton & sugar crops for . . . collected various amounts carried on the . . . sive under head gross active mass, I collected . . . interest C. H. Remick had in a corn crib for $ . . .

The letter offered in evidence and marked W . . . iting and is signed by my brother, Clark H. Remick . . . ture & handwriting I am familiar, all of the charg . . . expenses are correct.

(Signed) J. H. REMICK.

. . . BROUSSARD, being recalled, says: The letter offered . . . asked W. is in the handwriting and bears the sign . . . H. Remick to the best of my belief I was & am fa . . . his writing and signature. (Signature.)

(Signed) LASTIE BROUSSARD.

. . . the above to be all the evidence adduced, Jan . . . led same date.

(Signed) LASTIE BROUSSARD,
Clerk . . . of Louisiana.

District Court, Parish of Vermilion.

. . . sion of . . . REMICK. No. 648.

In the matters of the above entitled and numbered succession . . . to homologated the tableau of debts and charges herein filed . . . of A. D. Laborde, thereto. By reason of the law and
160 the . . . of A. D. Laborde, it is ordered that said ta . . . to include said Laborde as a privilege- creditor to the . . . dollars and reducing by said sum the amount carried . . . ordinary creditor; and by reason of the law and the . . . of the natural tutrix in all other respects, it is ordered . . . that said tableau as thus amended be and the same . . . homologated, and said nat. tutrix is ordered to settle in . . . with.

Thus done, read, and signed in open court, at Abb . . . day of Feb'ry, A. D. 1884.

(Signed) JOHN CLEGG, *Judge.*

. . . Filed Febr'y 4th, 1884.

(Signed) LASTIE BROUSSARD, *Clerk.*

Recorded March 7th, 1884.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify the above and foregoing to be a true and correct copy of the remnants of the burnt record of the mortuary proceedings of the succession of Clark H. Remick, No. 648 of the probate docket of the 25th jud'l dist. court in and for the parish of Vermilion, State of Louisiana, saved from the ruins of the court-house, which was destroyed by fire on Ap'l 7, '85.

Attest: GEO. W. SUMMERS,
D'y Clerk, Dist. Court.

Filed Dec. 15th, '93.

GEO. W. SUMMERS, *D'y Clerk.*

STATE OF LOUISIANA, }
Parish of Vermilion. }

I, Geo. W. Summers, deputy clerk dist. court in and for the parish of Vermilion, State of Louisiana, do hereby certify that the foregoing two hundred and twenty-five pages, from 1 to 225, inclusive, contain a true, faithful, and complete transcript of all documents filed, with the exception of such citations, etc., not required by rule VI, S. P. court of May 3, orders made, proceedings had, and evidence adduced on the trial of case of Laurent Lacassagne *vs.* H. Abraham & Son *et als.*, No. 570 of the civil docket of said court.

161 Given under my official signature and seal of office this 15th day of August, A. D. 1895.

GEO. W. SUMMERS,
[SEAL.] *D'y Clerk, Dist. Court.*

162 *Decree of the Supreme Court of Louisiana.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *March 23rd*, 1896.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

His honor Mr. Justice Miller pronounced the opinion and judgment of the court in the following case:

Mr. Justice Miller.

MONDAY, *March* 23*rd*, 1896.

LAURENT LACASSAICHNE, MARIE L. CASEY, Administratrix, Substituted,
vs.
H. ABRAHAM & SON ET ALS. } No. 11970.

Appeal from the 17th judicial district court for the parish of Vermilion.

This appeal is by the plaintiff from the judgment dismissing his suit, asserting title to property, accompanied with an injunc-
163 tion to maintain his possession sought to be disturbed by a seizure and sale under the writ issued in the suit of one of the defendants against F. Chapuis, the petition alleging that the property of defendant is — no manner bound for the defendants' judgment on which the writ is issued.

The property in controversy was acquired by Jean B. Cavailhez in 1869. The record shows a donation by Cavailhez and wife to Ernestine Diaz — their daughter Marceline, made in a contemplation of her marriage with Clark H. Remick, followed soon after by the sale of the property to him for fifteen thousand dollars, duly registered. Cavailhez and his wife died, he in 1882, and Ernestine Diaz before C. H. Remick died, and at the sale of the property of his succession his widow, Marceline, in 1883, acquired the property purchased by her husband from Cavailhez. Soon after she mortgaged the property to Albert C. Maxwell, and, failing to pay the debt, Maxwell instituted suit on the 21st of May, 1885, seized, sold under his writ, and became the purchaser, with plaintiff Lacassaigne, of the property at the sheriff's sale on the 15th of August, 1885. Lacassaigne afterwards bought Maxwell's one-half interest, thus becoming owner of the whole property. All these titles and the mortgage to Remick were duly recorded.

In 1884, 15 years after Cavailhez's sale to Remick and subsequently to the purchase by Mrs. Remick and her mortgage to Maxwell, a suit was brought in the U. S. court for the western district by Mrs. Jean Cave, alleging herself to be the wife of Jean B. Cavailhez by the marriage she claimed to have been contracted in France in 1833, and seeking to recover the property conveyed by Cavailhez to Remick in 1869. The averments of her bill
164 were substantially that the alleged marriage of Cavailhez and Ernestine Diaz was void; that the property involved in this controversy acquired during the marriage fell into the community; that the sale from Cavailhez to Remick was designed to defeat her rights as the wife of Cavailhez by transferring the property to the issue of the unlawful wife; that the price stated to have been paid by Remick was never paid, but consisted, in fact, of the amount settled in dowry by Cavailhez on his daughter. The donation and sale were in *fraudum legis* and void. The bill further averred the indebtedness of Cavailhez to the oratrix for her separate

funds, received by him in France, for which she had the legal mortgage of the wife on her husband's property, and contained the usual charges of bills in equity, of a combination and conspiracy of Cavailhez, Ernestine Diaz, and their daughter, Mrs. Remick, to deprive the oratrix of her rights.

It will be perceived that the only survivor of those whose acts were arraigned in the bill was Mrs. Remick, the sole party defendant, and process against her was prayed in her capacity of tutrix of her minor children and as administratrix of Remick's succession and individually. The prayer of the bill was for the recognition of the oratrix as the widow of Cavailhez; that the property be decreed that of the succession, subject to her right to one-half; that the marriage between Cavailhez and Ernestine Diaz be decreed void; that the sale to Remick be annulled; and, finally, that the debt claimed by the oratrix for her funds received by Cavailhez be recognized with legal mortgage on his half of the property. The suit resulted in the decree on January, 1886, recognizing the oratrix as the widow of Cavailhez and her rights as such; the decree annulled the sale to Remick; the donation by Cavailhez to Mrs.
165 Remick recognized the debt and mortgage claimed by the oratrix and adjudged she should be put in possession of the property.

Soon after this decree Mrs. Cave, thus recognized as the wife of Cavailhez, died, and by last will instituted F. Chapuis her heir. Then followed a suit, in the nature of an auxiliary bill, in the United States circuit court by Lacassaigne to protect his possession, but that failed by a dismissal on appeal to the United States Supreme Court, without prejudice to his action at law. While that suit was pending Chapuis conducted a proceeding in the State court, by which he claimed to become owner of the individual half of the property which, with the title claimed under the will, he made the basis of the debt and mortgage he contracted to Abraham & Son, the present defendants, who in 1895 purchased under their foreclosure. Lacassaigne remitted, by the decree of the United States Supreme Court of March, 1892, to his action at law — instituted his present suit in 1893, directed against Chapuis as well as Abraham & Son.

We have gone over the facts presented in the record, because to some extent, at least, they serve to illustrate the issue and have been discussed in the argument, but in our view the issue is very narrow. The case comes here on the question only of *res judicata*. We find it unnecessary to discuss the question so elaborately argued of the jurisdiction of the United States circuit court to render the judgment on which the exception is based of Mrs. Cavailhez *vs.* Marceline Cavailhez.

The argument to sustain the exception *res judicata*, or rather estoppel, as it is termed in the briefs, rests on the principle announced by our code that the property claimed in the suit
166 cannot be alienated pending the litigation, and the prohibition extends to suits for the enforcement of mortgages as well as petitory or possessory suits. Civil Code, article 2453, act No. 3

of 1878. There is no question in our minds that the suit of Mrs. Cavailhez was of a character to forbid any alienation during its pendency, but the difficulty of the defendants' case is whether there was any alienation in the meaning of the law of this property during the suit of Mrs. Cavailhez. There was no mortgage or sale other than the seizure and sale under the Maxwell mortgage; but that mortgage, given by one whose ownership was based on titles, spread for more than 15 years on the public records, was created in 1883, before the suit of Mrs. Cavailhez was brought, her bill having been filed May, 1884.

The sale that occurred after the suit was the sequel and enforcement of the pre-existing mortgage, which, for all purposes of this discussion, is to be deemed good and valid, not assailed by pleadings or proof, unless it is contended there was no power in Cavailhez to sell or in the purchaser under him to mortgage. In this view, then, before the pretensions of Mrs. Cavailhez were made known by any suit, the property was charge- with the mortgage conveying the right to seize and sell. Under that pre-existing mortgage plaintiff holds.

All concede the principles announced by the code prohibiting alienations *pendente lite*, but has the principle any application to this controversy? Cavailhez was the unquestioned owner of this property in 1869. Married or not, he had the power to sell. He conveyed to Remick; Remick dying, his widow acquired at
167 the succession sale. These titles were on record, and, on the faith the law gives to record ownership, Mrs. Remick obtained Maxwell's money and gave him the mortgage in 1883. It needs but the statement that the mortgage- who, in good faith, loans his money on the basis of recorded ownership acquires a right not capable of being effected by any fraud of the owner in conveying title. In a leading case, the court, dealing with a mortgage by the recorded owner, in maintaining the mortgage against the children assailing as fraudulent the title made by their father to the party who on the strength of his ownership mortgaged his property, used this language:

"Had the recorded owner sold to a third person, ignorant of the fraud of the vendee, it cannot be doubted the title of the purchaser would have been good. A mortgage is in the nature of an alienation, and the mortgage creditor with no knowledge of the fraud would be equally protected. Foster *vs.* Foster, 11th La., 408; Stockton *vs.* Craddick, 4th Ann., 286; Boudreau *vs.* Bergeron, 4th Ann., 83; Richardson *vs.* Hyams, 1st Ann., 286; Thompson *vs.* Whitbeck, 47th Ann., 49; Broussard *vs.* Broussard, 45th Ann., 1085. Thus, before the institution of the suit of Mrs. Cavailhez, Maxwell had acquired his mortgage and the right to seize and sell the property for the payment of the mortgage debt. That right he exercised, and the plaintiff Lacassaigne is a purchaser under that mortgage. It is to be maintained that this pre-existing vested right could not be exercised, but was defeated by the subsequent suit of this lady, asserting rights under a marriage never known to the public, as we

gather from the record, and claimed to have *been* taken place in France more than 50 years before her suit. The article of the code that the property cannot be alienated pending the suit is not
168 to be construed so as to divert rights acquired before the suit. Such construction would bring the articles in palpable conflict with the protection accorded to vested rights. If Maxwell had no power to seize and sell under his mortgage because of the institution of this suit, brought after his mortgage was created, then his contract right was utterly destroyed by no act of his—by an adjudication to which he was no party, and made in a litigation of which he could have no notice when he acquired his right, because the litigation was begun after the right was vested. The law deems all are appraised of pending suits, and any one who buys or takes a mortgage on property after the suit is begun acquires with notice, and consequently subject to such judgment as may be rendered in the suit.

All can appreciate the operation of that rule announced in the code, but the other proposition challenges prompt dissent that a right acquired is destroyed by the subsequent institution of a suit, and merely because the suit is brought, and of which there could be no notice when the third person acquired his title or mortgage. The line of authority cited by the defendants make the obvious application of the article of the code forbidding alienations pending the suit for the property. The decisions refer to rights on property sued for attempted to be created after the suit is brought. Barelli *vs.* Delassus, 16th Ann., 281; Taylor *vs.* Pipes, 24th Ann., 552, and others of the same type. The mortgage in this case created before could hardly be deemed affected because of the subsequent suit and judgment not directed against the mortgage creditor; but
169 yet it is claimed the right conferred by the mortgage is swept away by that suit. The enforcement of the mortgage is the assertion of the pre-existing right, and a sale under that mortgage, under which plaintiff holds, is in our view entirely without the scope of the article of the code. This view, as we think, the fair interpretation of the code, has been sustained in previous decisions cited. Thompson *vs.* Whitbeck, 47th Ann., 49. In our opinion the exception of *res judicata* should have been overruled.

If the sale by Cavailhez was a fraud on his wife, and Maxwell, the mortgagee creditor, and the plaintiff holding under him are implicated in the fraud, that would furnish a basis for relief to plaintiff. The case as presented here admits of no determination of that issue, and on that, as well as on all questions save that arising on the exception of *res judicata*, we give no opinion.

It is therefore ordered that the judgment of the lower court sustaining the exception of *res judicata* be avoided and reversed and the case be remanded for trial on the merits.

Rehearing refused June 25th, 1896.

The judgment having become final, the foregoing is a true copy of the original opinion and judgment rendered in the case of Laurent

Lacassaigne, Marie L. Casey, administratrix, substituted, *vs.* Abraham & Son, No. 11970.

Clerk's office, New Orleans, 26th June, 1896.

T. McC. HYMAN, *Clerk*

(Syllabus.)

170 The creditor in good faith acquiring his mortgage from t recorded owner is not affected by the fraud of the vendor vendee practiced in the conveyance of the title. 11th La., 406; 4 Ann., 82–286; 1st Ann., 286; 2nd H. D., p. 1372, No. 1.

The right of such mortgage creditor to seize and sell the pr erty is not affected by the suit of the wife of her rights, the s being directed not against the mortgage creditor, but only agai the reputed heir of the husband. *Ibid.* and 45th Ann., p. 108 47th Ann., 49.

The article of the code forbidding alienation of the proper pending the suit has no application to a valid mortgage creat before the suit is brought or to a sale under that pre-existing mo gage. C. C., art. 2453, act No. 2 of 1878.

Nor can the judgment in such suit be pleaded as *res judic* against such mortgage creditor no party to the suit. C. C., a 2286.

Filed June 29th, 1896.

ALCIDE LE BLANC,
Clerk & Recorder.

Mr. Justice BREAUX dissenting:

I do not think that the plaintiff, who alleges that he is the own of the property (in so far as appears of record in this case), was purchaser without notice, either actual or constructive, of the clai of Jeanne Cavee, widow of J. B. Cavailhez.

I am not prepared to agree with the proposition (with the e dence legally before us), nor does the opinion of the court, as I a preciate *to*, so determine, that a fraud was practised by the plaint in the case of Cavee, widow, against her husband in order to bri about the exercise of jurisdiction by the United States circ

171 court, neither am I inclined to the opinion that the plaint can invoke the fact in his behalf that the succession of C vailhez was not, in name, a party to the suit brought to recover t alleged right of Mrs. Cavee, Widow Cavailhez, as the issues w before the court in that case contradictorily with those under wh plaintiff claims to hold, and as against whom the title was annull by a judgment, which is not void, however voidable it may be.

I therefore respectfully dissent.

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

(2.)

Extract Minutes of Court: Recusation of Judge and Appointment of Judge ad Hoc.

MONDAY, *January 25th*, 1897.

Court opened pursuant to adjournment.
Present: His honor Conrad De Baillon, judge presiding.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON, F. CHOPPUIS, ET AL. } No. 570.

Presiding judge recused himself on account of having been of counsel for H. Abraham & Son, and appointed L. L. Bourges, Esq., judge *ad hoc*, and as such is duly sworn.
Court then adjourned till tomorrow, at *1* o'clock a. m.

(Sig.) G. DE BAILLON,
Judge 17th Jud'l Dist., La.

172 I hereby certify the above and foregoing to be a true and correct extract taken from the minutes of court, this 25th day of October, A. D. 1898.

JOS. G. LE BLANC,
D'y Clerk of Court.

(3.)

Extract Minutes of Court: Ans. of F. Zengle, Pub. Adm'r, and of Armand Moulor, Adm'r, Filed.

THURSDAY, *April* 15, 1897.

Court opened pursuant to adjournment.
Present: His honor Conrad De Baillon, judge presiding; L. L. Bourges, Esq., judge *ad hoc* presiding.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON *A* FRANCOIS CHOPPIUS.

Answer of F. Zengle, public administrator, and answer of Armand Moulor, administrator, filed.
Court then adjourned till tomorrow, the 19th, at 4 o'clock p. m.

(Sig.) C. DE BAILLON,
Judge 17th Jud'l Dist., La.

I hereby certify the above and foregoing to be a true and correct extract from the minutes of court.
This 25th day of Oct., 1898.

JOS. G. LE BLANC,
D'y Clerk of Court.

173 (4.)

Answer of F. Zengle, Pub. Adm'r.

To the honorable judge of the district court for the parish of Vermilion:

The supplemental petition of F. Zengle, public administrator of New Orleans, administrator of the succession of Jeanne Carolone Cave, widow J. B. Cavailhez, opened in division "E" of the civil district for the parish of Orleans, where said succession is now pending under administration, with respect presents—

That he wishes to revive in his name, as administrator aforesaid, the intervention filed by the succession of Jeanne Caroline Cave, widow Cavailhez, in the suit of Laurent Lacassaigne *vs.* Abraham & Son *et als.*, No. — of the docket of this honorable court, and he specially avers—

That previous to the pretended purchase by plaintiff and Thos. L. Maxwell of the property now in controversy, which plaintiff alleges to have occurred on August 15th, 1885, a suit had been instituted with actual knowledge thereof of A. G. Maxwell and Laurent Lacassaigne by said Jeanne C. Cave, widow Cavailhez, before the United States circuit court for the western district of Louisiana, at Opelousas, against Marceline Cavailhez, widow of Clark H. Remick, in her individual capacity and also as tutrix of her minor children, the issue of her marriage to said C. H. Remick, and also as tutrix administering the estate of her deceased husband; that said suit, No. 33 of its docket, was brought for the revendication of said property, the petitioner claiming, besides mortgage rights, the ownership thereof for herself individually and for the community theretofore existing between her and her deceased husband,

174 J. B. Cavailhez; that citation was duly served on said defendant in her individual and representative capacities on Jan. 11th, 1884, and said suit, after being contradictorily prosecuted in due course of proceedings, terminated by a final judgment rendered in favor of said plaintiff, Jeanne C. Cave, widow Cavailhez, on January, 1886, against said defendant, recognizing her title as alleged, and decreeing:

1st. That the sale of August 19th, 1869, by J. B. Cavailhez and Ernestine Diaz to Clark H. Remick of the plantation (which is presently in suit) be annulled and avoided;

2nd. That Jeanne C. Cave, widow Cavailhez, be recognized as the lawful wife and widow of the now deceased Jean Baptiste Cavailhez, entitled as such to all rights of widow in community;

3rd. That *is* the act of donation or dowry from J. B. Cavailhez and Ernestine Diaz to Marceline Cavailhez, of August 19th, 1869, and the sale by same to Clark H. Remick, of same date, be decreed to be null and void and of no effect, and that Ernestine Diaz, the mother of defendant Marceline Cavailhez, never was the lawful wife of J. B. Cavailhez; and

4th. That the claim of Jeanne Caroline Cave, widow Cavailhez,

against the succession of J. B. Cavailhez be recognized, amounting to five thousand three hundred and ten dollars ($5,310.00), with legal interest from February 25th, 1884, with legal mortgage.

That the pretended title set up by Laurent Lacassaigne is posterior in date to the aforesaid suit in revendication brought in chancery against Marceline Cavailhez and the estate of Clark
175 H. Remick, wherein the thing now in controversy was the thing claimed in said chancery suit, and therefore could not in law be alienated pending said action of revendication, so as to prejudice the rights of Jeanne C. Cave, widow Cavailhez, in said revendication suit, and also the rights of the aforesaid community in said property; that the judgment rendered in said chancery suit — *res adjudicata* against the said Marceline Cavailhez, widow Remick; individually and as tutrix of her minor children aforesaid, and as tutrix administering the succession of her deceased husband, C. H. Remick, and it is equally binding as an estoppel against transferees holding or claiming after the filing of said chancery suit and citation duly served thereupon — said defendants, of the pendency of which suit said Maxwell and Laurent Lacassaigne had all the time actual knowledge.

That by the last will of Jeanne Caroline Cave, widow Cavailhez, duly probated by the civil district court for the parish of Orleans, where said succession is still under administration, Francois Chapuis was appointed executor, besides being devised residuary rights as universal legatee, dependent upon the final liquidation of aforesaid community, and the payment of debts and other legacies; that said Francois Chapuis qualified as executor, and in that capacity was put in possession of said plantation, which he was administering as such executor when the present proceedings were instituted, in total disregard of the rights of the said succession in community and of the rights therein of the said Jeanne C. Cave, widow Cavailhez, and of the authority of the civil district court for the parish of Orleans, which had vested jurisdiction over said property and held the same in *gremio legis*.

176 That the aforesaid judgment of the United States circuit court at Opelousas is final; that no appeal has ever been asked, nor can any one ever be sued out in the premises, but the said Laurent Lacassaigne, who claims as the successor or *ayant* cause by particular title of defendant in that revendication suit by purchase alleged to have been made fifteen months after the institution of said revendication suit, with due citation and pending contradictory proceedings therein, has since questioned such proceedings and judgment duly and solemnly rendered against his author, and thereupon said Laurent Lacassaigne brought a suit in chancery against Francois Chapuis, individually and as executor of the succession of Jeanne C. Cave, widow Cavailhez, before the circuit court of the United States, fifth circuit, on April 10th, 1886, No. 139 of its docket, to restrain him from further executing said judgment in said suit — revendication, complaining of the issuance thereon of a writ of possession and of its due execution by the U. S. marshal, who accordingly had put in possession said Francois Cha-

puis, as executor aforesaid, and praying that said suit in revendication be declared an absolute nullity and all the proceedings under it void "—;" that said suit be decreed to have no force nor effect against said Laurent Lacassaigne, he not having been a party to said suit and the decree not operating against him, and that the writ of possession under which he was evicted be set aside, and that he be reinstated in his alleged possession.

That upon demurrer filed by said Francois Chapuis, executor, said chancery suit was dismissed in due course in the U. S. circuit court; whereupon said Laurent Lacassaigne appealed to the U. S. Supreme Court, where said judgment of dismissal was
177 affirmed against said appellant in matter of Laurent Lacassaigne *vs.* Francois Chapuis, ex'r, &c., on March 21st, 1892, as reported in volume 144 of U. S. Reports, p. 119; that said judgment is final and *res adjudicata* as to all issues involved, with the sole reservation of an action at law in favor of said Laurent Lacassaigne to enforce any right he may have in the premises as a mortgage creditor of said Marceline Cavailhez, widow Remick.

Wherefore petitioner prays for revival of intervention in his name as administrator of the succession of Jeanne Caroline Cave, widow Cavailhez, and he accordingly prays that the demand of Laurent Lacassaigne as owner of said property be dismissed with costs.

Prays for general relief; and, as in duty bound, &c.

ALBERT VOORHEIS,
Att'y for Intervenor.

Filed April 15th, 1897.
JOS. G. LE BLANC,
D'y Clerk of Court.

(5.)

Answer of Armand Moulor, Adm'r.

LAURENT LACASSAIGNE
vs.
ABRAHAM & SON ET AL. } No. —.

Armand Moulor, administrator of the succession of J. B. Cavailhez, deceased, denies all and singular plaintiff's allegations, and
178 he especially avers that he reiterated the allegations of the peremptory exception of *res adjudicata* filed heretofore in this case, and further states:

That the judgment rendered in January, 1886, in favor of the complainant Jeanne Caroline Cave, widow Cavailhez, in the chancery suit No. 33 of the docket of the United States circuit court, western division of Louisiana, in Opelousas, against Marceline Cavailhez, widow C. H. Remick, in her individual capacity of tutrix of her minor children and as administratrix of the succession of her deceased husband, C. H. Remick, is *res adjudicata* against her in said capacities, and is as binding against her *ayant* cause and

successors by particular title who have acquired from her after the institution of said revendication suit and pending its prosecution.

That the pretended titles of Laurent Lacassaigne which they claim from her were acquired, as they allege, after the institution of said revendication suit, after service of citation on and issue made by said defendant, Marceline Cavailhez, widow C. H. Remick, and while said suit of revendication was then being prosecuted contradictorily in the circuit court of the United States at Opelousas, as aforesaid, with actual knowledge of said Laurent Lacassaigne of pendency of said proceedings.

That said suit was brought for the revendication of said property on behalf of the community heretofore existing between the deceased, J. B. Cavailhez, and his since deceased wife, Jeanne C. Cave, widow Cavailhez, the petitioner claiming the ownership of said property in behalf of said community and of herself as a member thereof, and as a mortgage creditor of said community; that
179 citation was duly served on said defendant, Marceline Remick, in her individual and representative capacities, on the 11th of January, 1884, and said suit was prosecuted contradictorily until final judgment rendered in January, 1886, in favor of the oratrix and against said defendant, decreeing:

1. That the sale of August 19th, 1869, by J. B. Cavailhez and Ernestine Diaz to Clark Remick of the property (now in suit) be cancelled, annulled, and avoided;

2. That Jeanne Caroline Cave, widow Cavailhez, be recognized as the lawful wife of and widow of the deceased Jean Baptiste Cavailhez, and as such entitled to all the rights of widow in community;

3. That the act of donation or dowry from J. C. Cavailhez and Ernestine Diaz to Marceline Cavailhez of the 19th August and the sale from the same to Clark H. Remick of same date be decreed null and void and of no effect, and that Ernestine Diaz, the mother of defendant Marceline Cavailhez, never was the lawful wife of said J. B. Cavailhez; and

4. That the claim of Jeanne Caroline Cave, widow Cavailhez, against the succession of J. B. Cavailhez be recognized, amounting to ($5,310.00) fifty-three hundred and ten dollars, with legal interest from the 25th February, 1884, with legal mortgage.

That the pretended titles set up by Laurent Lacassaigne are posterior in date to aforesaid suit of revendication brought in chancery against Marceline Cavailhez, widow Remick, and against the estate of said C. H. Remick, wherein the thing now in controversy was the thing claimed in said chancery suit, and consequently
186 could not in law be alienated pending suit in revendication to the prejudice of said claimant, Jeanne C. Cave, widow Cavailhez, and of the aforesaid community, in said revendication suit.

That the judgment rendered in said chancery suit is *res adjudicata* against said Marceline Cavailhez, widow Remick, individually and in her representative capacities, and it is equally binding as an estoppel against her *ayant* cause and transferrees claiming

from her since the institution of said revendication suit and with full, actual knowledge at the time that said revendication suit was pending and contradictorily prosecuted.

That by the last will of Jeanne C. Cave, widow Cavailhez, duly probated by the civil district court for the parish of Orleans, in which court said succession is now under administration, Francois Chapuis was appointed executor, besides being made residuary legatee by universal title, dependent upon the liquidation and settlement of the aforesaid community and the payment of the debts and of the other legacies; that said Francois Chapuis qualified as executor, and in that capacity was put in possession of the plantation in suit, and held the same as such executor when the present proceedings were instituted, in utter disregard of the rights of said succession in community and of the authority of the civil district court for the parish of Orleans, which had and still has jurisdiction of said property.

That the aforesaid judgment in chancery of the United States circuit court of the western district of Louisiana at Opelousas is final; that no appeal has ever been sued out, nor can there be any more sued out in the premises; but the said Laurent Lacas-
181 saigne, who claims as successors or *ayant* cause by particular title of said defendant in said revendication suit by purchase alleged to have been made over one year after the institution of said revendication action therein, with due citation, and pending contradictory proceedings therein, afterwards questioned said proceedings and judgment duly and solemnly rendered against his author, and brought suit in chancery against Francois Chapuis, executor aforesaid and individually, on the 10th of April, 1886, before the United States circuit court, western division of Louisiana, at Opelousas, No. 139 of its docket, to restrain said executor from further executing said judgment in said suit of revendication, complaining of the issuance therein of a writ of possession and of its due execution by the United States marshal, who accordingly had put in possession of said property said Francois Chapuis, executor aforesaid, and praying specially:

That said suit in revendication "be declared an absolute nullity and all the proceedings under it void," praying "that said suit be decreed to have no force nor effect against said Laurent Lacassaigne, he not having been a party to said suit, and the decree not operating against him;" praying further that the writ of possession, under which he was evicted by said United States marshal, be set aside, and that he be reinstated in his alleged possession.

That upon further demurrer filed by said Francois Chapuis, executor, said chancery suit was dismissed in due course in the United States circuit court; whereupon said Laurent Lacassaigne appealed to the United States Supreme Court, where said judgment was affirmed against said appellant, in the matter of Laurent Lacas-
saigne *vs.* Francois Chapuis, ex'r, &c., on March 21st, 1892,
182 reported in U. S. Reports, volume 144, page 119; that said judgment is final and *res adjudicata* between the parties thereto, with the reservation of an action at law received in favor of said

Laurent Lacassaigne to bring an action at law to enforce his rights, if any, as a mortgage creditor of Marceline Cavailhez, widow Remick. Wherefore this respondent prays that plaintiff's demand be dismissed.

(Sig.) ALBERT VOORHIES, *Att'y.*

Filed April 15th, 1897.

JOS. G. LE BLANC,
D'y Clerk of Court.

(6.)

Extract Minutes Court: Case Continued, &c.

TUESDAY, *April 20th*, 1897.

Court opened pursuant to adjournment.

Present: His honor Conrad De Baillon, judge presiding; L. L. Bourges, Esq., judge *ad hoc* presiding.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON & FRANCOIS CHAPUIS ET AL.

On motion of counsel for F. Zengel, public administrator, and of Armand Moulor, administrator, this case is continued till next term of court.

Court then adjourned till tomorrow, at 9 o'clock a. m.

C. DE BAILLON,
Judge 17th Jud'l Dist., La.

183 I hereby certify the above and foregoing to be a true and correct extract taken from the minutes of court.

This 25th day of October, 1898.

JOS. G. LE BLANC,
D'y Clerk of Court.

(7.)

Extract from Minutes of Court: Pet. of Intervention on Part of Wid. C. H. Remick Filed, &c.

FRIDAY, *November 26th*, 1897.

Court opened pursuant to adjournment.

Present: His honor Conrad De Baillon, judge presiding; L. L. Bourges, Esq., judge *ad hoc* presiding.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON & F. CHAPUIS ET AL.

Petition of intervention on part of Widow C. H. Remick filed, and, on motion of counsel for defendant and intervenor, a commission was granted to take testimony of Widow C. H. Remick, and the

same was made returnable on or before the 14th of December, 1897, and interrogatories for the purpose also filed.

Court then adjourned till tomorrow, at 10 o'clock a. m.

(Sig.) C. DE BAILLON,
Judge 17th Jud'l Dist., La.

I hereby certify the above and foregoing to be a true and
184 correct extract taken from the minutes of court.
This 25th day of October, 1898.

JOS. G. LE BLANC,
D'y Clerk of Court.

(8.)

Acceptance of Service of Pet. of Intervention and Interrogatories of Mrs. C. H. Remick.

17th Judicial District Court, Parish of Vermilion.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON ET AL. } No. 570.

To the clerk of said court:

You are hereby authorized to enter acknowledgment of service of interrogatories addressed to Mrs. Widow C. H. Remick and a petition of intervention and citation thereon of said Mrs. Widow C. H. Remick upon Mrs. Marie L. Casey, administratrix of the estate of Laurent Lacassaigne, plaintiff, at New Orleans, Louisiana, this the 3rd day of December, 1897, she now herein making such acknowledgment by and through her undersigned attorney.

DON CAFFERY & SON &
W. S. BENEDICT, *Of Counsel.*

Filed Dec. 6th, 1897.

ALCIDE LE BLANC,
Clerk of Court.

185 (8½.)

Petition of Intervention of Marceline Cavailhez, Wid. C. H. Remick.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON. } No. —.

To the district court for the parish of Vermilion:

The petition of intervention of Marceline Cavailhez, widow of C. H. Remick, deceased, in her individual capacity and in her twofold capacity of tutrix of her minor children and of tutrix administering the succession of her said husband, respectfully represents:

That the suit in chancery brought against her by Jeanne Caroline Cave, widow Cavailhez, No. 33 of the docket of the U. S. circuit court at Opelousas, western circuit of Louisiana, was prosecuted

contradictorily in good faith until final decision rendered in favor of the oratrix on the revendication demand, but in favor of the defendant, present intervenor, liquidating her rights against the community thereof existing between J. B. Cavailhez and said oratrix, Jeanne Caroline Cave, which community was decreed to pay, with privilege, to this intervenor the sum of fifteen dollars, bearing interest, besides legal interest.

That said T. L. Maxwell and Laurent Lacassaigne were informed and fully cognizant of the pendency of said chancery suit, and were advised to join the defendant therein to resist the claim in revendication of the oratrix, but they refused to do so; and, on the
186 contrary, brought their executory proceedings to foreclose the mortgage they claimed on the property in revendication, making this intervenor a party in her individual capacity; that not only were their claimants informed in time of the pendency of said chancery suit in revendication, but it was a matter of notoriety in the parish of Vermilion, and as a direct consequence thereof the plantation was sold at a sacrifice, for less than half of its value, and adjudicated to the said mortgage *creators* without competition.

That said judgment of the United States circuit court is *res judicata* against the defendant (this intervenor) and also against the said T. L. Maxwell and Laurent Lacassaigne, who are besides estopped from asserting any title to the property adjudicated in revendication to the oratrix.

— of said claimants is by asserting their rights, if any, as mortgage creditors upon the said revendicated property in accordance with the decree of the U. S. Supreme Court in Laurent Lacassaigne *vs.* Chappuis *et als.* in the appeal taken from the judgment of the U. S. circuit court for the western district of Louisiana (vol. 144 of U. S. S. C., page 119), which judgment is also *res judicata* in the premises between all the parties to this litigation.

Wherefore petitioner prays that she be allowed to intervene herein; that the parties, plaintiffs and defendant, be cited; that plaintiffs' demand be rejected.

Prays for general relief, and as in duty bound, &c.

WM. J. FORMENTO, *Att'y.*

Filed Nov. 26, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

187 (9.)

Petition of Marie L. Casey, Wife of Thos. H. Casey, to Make Herself Party Plaintiff.

17th Judicial District Court, Parish of Vermilion.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON ET AL } No. 570.

The petition of Marie L. Casey, wife of Thomas H. Casey, and by him duly authorized, aided, and assisted, with respect represents:

That Laurent Lacassaigne, plaintiff herein, departed this life in the city of New Orleans on the 3rd day of January, 1896, and that your petitioner, Marie L. Casey, applied for and received letters of administration on the estate of her deceased father, a copy of said letters being hereto annexed as part thereof.

Wherefore she prays leave of court to make herself party plaintiff herein for the deceased, and that due notice thereof be given all parties in interest.

DON CAFFERY & SON,
W. S. BENEDICT, *Of Counsel.*

Filed December 9th, 1897.
JOS. G. LE BLANC,
Clerk of Court.

(10.)

Letters of Marie L. Casey, Adm'r of Succ. of Laurent Lacassaigne.

188 Succession of LAURENT LACASSAIGNE. No. 48277.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "B."

This shall certify to all whom it may concern that on the ninth (9th) day of January, in the year of our Lord one thousand eight hundred and ninety-six, and the one hundred and twentieth of the Independence of the United States of America, an application was made to the Honorable Fred D. King, judge of the civil district court for the parish of Orleans, division "B," by Marie Lacassaigne Casey, wife of Thomas H. Casey, duly authorized, praying that she might be appointed administratrix of the succession of Laurent Lacassaigne (deceased).

Now, know ye that Marie Lacassaigne Casey, wife of Thomas H. Casey, has been, and she is hereby, appointed administratrix of the said succession of Laurent Lacassaigne, and that she has fulfilled all the requisites of law.

Witness our hand and the seal of the civil district court this 29th day of January, in the year of our Lord one thousand eight hun

dred and ninety-six, and in the one hundred and twentieth of the Independence of the United States.

(Sig.) FRED D. KING, *Judge.*
P. A. DUCOING, *D'y Clerk.*

A true copy.
F. E. PETERSON, *Dt. Clerk.*

189 Filed Dec. 9th, 1897.
JOS. G. LE BLANC,
D'y Clerk of Court.

(11.)

Answer of H. Abraham & Son.

17th Judicial District Court, Parish of Vermilion.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON. } No. —.

Defendants, H. Abraham & Son, for answer to plaintiff's petition in this case, deny all and singular the allegations therein contained, except such as are hereinafter admitted.

They admit that the plantation, &c., described in plaintiff's petition was seized and advertised for sale by the sheriff in execution of a judgment obtained by them against Francois Chapuis.

Further answering, they aver that Francois Chapuis was at the time of said seizure and since his death his succession is now the sole and exclusive owner of an undivided half interest in said plantation by virtue of his purchase thereof made on the 3rd day of June, 1889, at probate sale made by the sheriff of Vermilion parish under a decree and order of the dist. court of this parish granted in the matter of the succession of Jean Baptiste Cavailhez, whose succession was regularly opened before the said district court of Vermilion parish, and which was seized with jurisdiction of the property; which decree ordered the sale of said property
190 to pay the debts of said succession; at which sale said Francois Chapuis individually became the purchaser and was put in possession of the said undivided half interest of said plantation which belonged up to the time of said probate sale to the succession of J. B. Cavailhez, who died at his domicile on said plantation some years previous.

That said half interest in said plantation was lawfully adjudicated to said Chapuis, as above set forth, for the price and sum of three thousand three hundred and seventy dollars, and that thereafter he held and possessed the same individually and as owner thereof until it was seized by the sheriff as aforesaid.

Defendants aver that the other half interest in said plantation was acquired by said Chapuis as universal legatee of Jeanne Caroline Cave, deceased, widow of said J. B. Cavailhez, under her last will and testament, which was duly probated by the civil district

court of the parish of Orleans, and that he took possession of said other half as owner by virtue of said testament.

That said Chapuis executed a special mortgage in favor of defendants bearing upon the whole of said plantation to secure the debt upon which they obtained their said judgment against him.

That they loaned him money and accepted the mortgage to secure the same on the faith of his recorded title as owner.

They aver that said seizure of said plantation was lawful and should be maintained.

For further answer, they adopt the allegations and defenses set up and contained in the answer of Armand Moulor, administrator, filed in this case except those averments that the civil district court of the parish of Orleans had jurisdiction over the whole plantation, and that said Chapuis held possession thereof
191 merely in his capacity as executor of the estate of Jeanne Caroline Cave.

Wherefore defendants pray that plaintiff's injunction be dissolved; that the title of said Chapuis as owner of said plantation be recognized, and that the said seizure thereof by the sheriff in satisfaction of their judgment against said Chapuis be maintained.

And they pray for costs and general relief, &c., &c.

W. A. WHITE,
Attorney for Abraham & Son.

Filed Dec. 15th, 1897.

JOS. C. LE BLANC,
D'y Clerk of Court.

(12.)

Letters of Admr. of Marie L. Casey of the Succession of L. Lacassaigne.

Succession of LAURENT LACASSAIGNE. No. 48277.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "B."

This shall certify to all whom it may concern that on the ninth day of January, in the year of our Lord one thousand eight hundred and ninety-six, and the one hundred and twentieth of
192 the Independence of the United States of America, an application was made to the Honorable Fred D. King, judge of the civil district court for the parish of Orleans, division "B," by Marie Lacassaigne Casey, wife of Thomas H. Casey, duly authorized, praying that she might be appointed administratrix of the succession of Laurent Lacassaigne, deceased.

Now, know ye that Marie Lacassaigne Casey, wife of Thomas H. Casey, has been, and she is hereby, appointed administratrix of the said succession of Laurent Lacassaigne, and that she has fulfilled all the requisites of law.

Witness our hand and the seal of the civil district court this

29th day of January, in the year of our Lord one thou-
[SEAL.] sand eight hundred and ninety-six, and the one hundred and twentieth of the Independence of the United States.

[SEAL.] (Sig.) FRED D. KING, *Judge.*
(Sig.) P. A. DUCOING, *Clerk.*

A true copy.
P. A. DUCOING, *D'y Clerk.*

Filed Dec. 15th, 1897.
JOS. G. LE BLANC,
D'y Clerk of Court.

Application to Revive Suit in Name of Marie L. Casey, Admr. of the Estate of L. Lacassaigne. Annexed to Document No. 11.

193 District Court of the Parish of Vermilion.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON ET AL. } No. 570.

Now comes into court counsel for plaintiff and makes known to the court the fact of the death of Laurent Lacassaigne, plaintiff, and the opening of the succession in the honorable the civil district court for the parish of Orleans, division B, No. 48277 of the docket, and the appointment and qualification of Marie Lacassaigne, wife of Thomas H. Casey, as administratrix of said estate, and she is, as such, a necessary party to this suit to stand in lieu and place of plaintiff, deceased.

Wherefore it is ordered by the court that Marie Lacassaigne, wife of Thomas H. Casey, be, and she is hereby, authorized to prosecute this suit in lieu and stead of plaintiff, Laurent Lacassaigne, deceased.

Service accepted.

ALBERT VOORHIES,
Att'y for Moulor, Adm'r, & F. Zengel, Pub. Adm'r.

Filed Dec. 15th, 1897.
JOS. G. LE BLANC,
D'y Clerk of Court.

(13.)

Exception of Marie L. Casey, Adm'r'x of the Succ. of L. Lacassaigne, to the Petition of Intervention of Mrs. C. H. Remick.

194 17th Judicial District Court, Parish of Vermilion.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON ET AL. } No. 570.

Now into court comes Marie L. Casey, administratrix of the estate of Laurent Lacassaigne, plaintiff herein, and, for exception to the

petition of intervention of Mrs. C. H. Remick herein filed in her several capacities, says:

That same is not presented in manner and form according to law in this, 1st, that it is too vague, general, and indefinite to make answer unto.

2nd. That it discloses no cause of action.

3rd. That it prays for no relief beneficial to said intervenor.

Wherefore she prays these her exceptions may be maintained and this suit dismissed with costs.

But in the event the court should decree otherwise than reserving the benefit of said exceptions and of all other legal exceptions, plaintiff denies generally each and every allegation in said petition of intervention contained not specially or directly hereinafter admitted.

And, further, she specially denies that suit No. 32 of the United States circuit court, referred to by said intervenor, was prosecuted contradictorily or in good faith or that plaintiff or T. L. Maxwell were informed or were cognizant thereof at the time of the pendency thereof, in any manner or form, or that they are bound in law or equity, and she specially denies that said intervenor prosecuted herein her said intervention in good faith or for her
195 own benefit.

Wherefore plaintiff prays for judgment in her favor on said intervention, and that the same may be dismissed with costs.

DON CAFFERY & SON &
W. S. BENEDICT, *Of Counsel.*

Filed Dec. 15th, 1897.

JOS. G. LE BLANC,
Clerk of Court.

(14.)

Extract Minutes Court: Application of Marie L. Casey, Adm'r'x, to Revive Suit; Motion Fixing Case, &c.

MONDAY, *December 15th*, 1897.

Court opened pursuant to adjournment.

Present: His honor Conrad De Baillon, judge presiding.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON & F. CHAPUIS ET AL.

Application to revive suit in the name of Marie L. Casey, adm'r'x of the succession of Laurent Lacassaigne, filed, and the case fixed for trial today. Evidence taken and left open for argument. Return day of commission fixed for Feb. 1st, 1898.

Court then adjourned till tomorrow at 9 o'clock a. m.

(Sig.) C. DE BAILLON,
196 *Judge 17th Jud'l Dist., La.*

I hereby certify the above and foregoing to be a true and correct extract taken from the minutes of court this 25th day of Oct., 1898.

JOS. G. *DE* BLANC,
D'y Clerk of Court.

(15.)

Note of Evidence Adduced on Trial of Case.

17th Judicial District Court, Parish of Vermilion, Louisiana.

LAURENT LACASSAIGNE
vs.
H. ABRAHAM & SON & FRANCOIS CHAPUIS ET AL. } No. 570.

Note of evidence on the trial of the above case.

It is agreed that the documents contained in the transcript now on file in the Supreme Court in this case shall be considered as having been introduced and filed in evidence on this trial, and that said transcript shall constitute a part of this record, the objections made to said evidence to stand as noted in the note of evidence taken on the trial of the peremptory exception of *res adjudicata*, all bills of exceptions referring to said evidence also constituting a part of this record, and also all documents appearing on the note of evidence.

It is also agreed that the transcript on file in the Supreme
197 Court of the U. S. in the case of L. Lacassaigne *vs.* Francois Chapuis, executor, judgment in said case being reported in volume 144 U. S. Reports, page 119, shall also constitute a part of this record.

It is also agreed that document marked "A" 1, being a certificate from the clerk of the Supreme Court of the United States, showing an amendment of a decree in said case, shall be made a part of this record.

Plaintiff's Evidence.

Plaintiff offers in evidence a certified copy of act of sale from J. B. Cavailhez to C. H. Remick, marked "A 2."

Also copy of mortgage from Mrs. C. H. Remick to A. G. Maxwell, marked "A 3."

Record of the foreclosure proceedings in suit of Albert Maxwell against Mrs. C. H. Remick, being restricted to the petition for the same and order for same.

Sheriff's deed in said proceedings to Maxwell and Lacassaigne.

Sale from Maxwell to Lacassaigne of the undivided half of said property, with certificate of clerk of court showing regjstration.

LASTIE BROUSSARD, being duly sworn, says:

I was clerk of court of Vermilion parish, Louisiana, from the year 1865 to the year 1888. The court-house of this parish, with most of the public records, was destroyed by fire on the 7th day of April, 1885. The succession of C. H. Remick was opened before

the burning of the court-house; I think it was opened in 1882; I remember the proceedings in the succession of C. H. Remick,
198 and also the sale to Mrs. C. H. Remick made by the sheriff at public auction; the property was sold under an order of court to pay debts; the plantation in this suit was bought by Mrs. C. H. Remick individually; she was tutrix at the time of her minor children. I wrote up the process verbal of that sale. I believe these proceedings are burnt. I never investigated them, but I am certain they are burnt; there might be some parts left; some of the older records were partially burnt, but later original records were entirely burnt; there might be in some cases a few remnants of the records of original documents left.

I was well acquainted with Jean Baptiste Cavailhez. It is to my knowledge from the records that he was a naturalized citizen of the United States. I know this from the fact that I saw several times the judgment of court naturalizing him, and from the further fact that I gave him several copies of that judgment. This judgment with other records has been destroyed by fire. Mr. Cavailhez came here in 1849. He served as police juror under Womack, but I cannot say whether he was naturalized before or after the war, but I think it was during 1866 or 1867.

Cross-examined:

At that time Ernestine Diaz, the mother of Mrs. Remick, was living with J. B. Cavailhez as man and wife. Jeanne Caroline Cavailhez then was not here.

The property was advertised for that sale under both writes.

Mr. Jean Baptiste Cavailhez died on the plantation. I saw him on the plantation a few days before he died. His domicile
199 and home was on that plantation. He died a few days before Remick, in 1882. I think he went on the place about the year 1860, and I believe that he lived continuously on the place.

It is admitted by all parties that the property in dispute is worth more than $10,000.00.

Evidence on Behalf of Intervenor and Defendants.

Record of suit of L. Lacassaigne *vs.* F. Chapuis, executor, &c., United States Supreme Court, No. 188, marked A & B.

Writ of possession and return of the United States marshal, marked "D."

Record of succession of Jeanne Caroline Cavailhez, widow of J. B. Cavailhez, number 17091 of the civil district court of New Orleans, marked "I." (Not offered by Abraham & Son.)

It is objected to by plaintiff's counsel on the ground that the Supreme Court has disposed of the question of *res adjudicata*, arising from the judgment in this suit of Mrs. Jeanne C. Cave, widow, *vs.* Mrs. C. H. Remick, number 33 of the docket of the circuit court for the western district of La.; that this evidence is inadmissible for that reason, as it reopens the issue decided by the Supreme Court.

The court overruled the objection, as the name goes to the effect and admits the evidence. Bill reserved. This same objection applies to all offers of any part of the record in the above case. The same ruling and the same bill.

Record number 33 of the United States circuit court, Jeanne Caroline Cave *vs.* Marceline Cavailhez, *number 33*, the whole record, especially the bill in chancery, the answer of Marceline Cavailhez, widow of C. H. Remick, the judgment rendered in that case, with the writ of possession, and the returns of the United
200 States marshal.

We now offer in evidence, as part of the record of the succession of Jeanne Caroline Cave, number 17091 of the civil district court of the parish of Orleans, the inventory in said succession.

We now offer in evidence the records of the United States circuit and Supreme Court in suit of Laurent Lacassagne *vs.* F. Chapuis, executor, &c., and especially the judgment of the United States Supreme Court sustaining the demurrer and peremptory exception filed by appellees, with reservation of mortgage rights.

We now offer in evidence the interrogatories to Widow C. H. Remick and her answers thereto, with the agreement that the answers, when received, will be filed subject to objections to be presented by said plaintiff to the admissibility of said evidence, said objections to be made when evidence is received.

We now offer in evidence, in suit of Laurent Lacassaigne *vs.* Jeanne Caroline Cave, the decree of the circuit court of the United States, marked "L."

In the same suit we now offer in connection therewith the restraining order.

We now offer especially the judgment rendered by the circuit court of the United States in suit of Laurent Lacassaigne *vs.* F. Chapuis, executor.

Evidence on Behalf of H. Abraham & Son and J. H. Abraham, Adm'r.

We now offer in evidence plaintiff's petition and copies of mortgage acts annexed thereto and judgment of court in suit of
201 H. Abraham & Son *vs.* Francois Chapuis, number 540 of the docket of the district court of this parish.

Transcript of mortuary proceedings had in the succession of Francois Chapuis.

Transcript of mortuary proceedings had in the succession of Jean Baptiste Cavailhez, including process verbal of sale of an undivided half interest in the plantation in question to Francois Chapuis.

CONRAD DE BAILLON, being duly sworn, says:

I was acquainted with Francois Chapuis; he lived on the Remick plantation in controversy. I had occasion to pass there often, as it was my route to come to Abbeville before the railroad begun. He had absolute possession of that plantation while he was living on it from 1886 to the time of his death.

Petition in suit of Gerac Bros. *vs.* Remick Plantation, number 1190 of the docket of this court; also exception filed by Francois Chapuis and judgment of court in said case.

Petition — suit number 105 of the docket of this court; also a defendant's answer and the final judgment of the circuit court; also all proceedings had in said suit.

It is objected to on the ground that these proceedings are *res inter alia acta* and are not binding upon the plaintiff in his assertion of title in the regular petitory action against adverse holders. Overruled by the court because the evidence goes to the effect rather than the admissibility. Bill reserved. Plaintiff further objects to this evidence on the ground that it is inadmissible under the pleadings herein, no allegations having been made under which
202 it can be offered, and that it is irrelevant. Same ruling. Same bill.

I hereby certify the above and foregoing to be all the evidence adduced on the trial hereof this 15th day of December, 1897, and filed on same date.

JOS. G. LE BLANC,
D'y Clerk of Court.

(16.)

Documentary Evidence.

"A 1."

Supreme Court of the United States, October Term, 1891.

Certificate from clerk of Supreme Court of U. S. showing an amendment of a decree.

LAURENT LACASSAIGNE, Appellant,
vs.
FRANCOIS CHAPUIS, Testamentary Executor of Jeanne Caroline Cave Cavailhez, Deceased. } No. 188.

Appeal from the circuit court of the United States for the western district of Louisiana.

This case came on to be heard on the transcript of the record from the circuit court of the United States for the western district of Louisiana, and was argued by counsel.

On consideration thereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court
203 in this cause dismissing the bill absolutely be so modified as to declare that it is without prejudice to an action at law, and, as so modified, be, and the same is hereby, affirmed with costs.

March 21st, 1892.

Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing manuscript page contains a true copy of the decree entered on the twenty-first day of March, 1892,

in the cause of Laurent Lacassaigne, appellant, *vs.* Francois Chapuis' testamentary ex'r, &c., No. 188, October term, 1891, as the same remains upon the files of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this eleventh day of September, A. D. 1893.

JAMES H. McKENNEY,
[SEAL.] *Clerk of the Supreme Court of the United States.*

Filed Dec. 15th, 1898.

JOS. G. LE BLANC,
D'y Clerk of Court.

(17.)

Act of Mortgage from Mrs. C. H. Remick to A. G. Maxwell.

STATE OF LOUISIANA, }
Parish of Vermilion. }

204 Be it known that on this the 6th day of November, A. D. 1882, before me, Lastie Broussard, clerk of the district court and *ex officio* notary public, duly commissioned and qualified as such in and for the parish and State above written, personally came and appeared Mrs. Marceline C. Cavailhez, widow of Clark H. Remick, of lawful age and a resident of the said parish, who declared unto me, and in presence of the witnesses hereinafter named and undersigned, that she was justly indebted to Mr. Albert G. Maxwell, also of said parish, in the full sum of three thousand four hundred and eighty-eight $\frac{50}{100}$ dollars, payable in two installments, viz., eighteen hundred and thirty-nine dollars payable on the 24th day of December, 1883, and sixteen hundred and forty-nine $\frac{50}{100}$ dollars on the 24th day of December, 1884, as shown by the two promissory notes of said Mrs. M. C. Cavailhez drawn this day in accordance herewith, ammounting in the aggregate sum of three thousand four hundred and eighty-eight $\frac{50}{100}$ dollars, and the said notes being conditioned to bear eight per cent. per annum interest from maturity until paid.

She further declared that in order to secure the payment of said notes the said Mrs. Marceline C. Cavailhez does hereby pledge unto the said Albert C. Maxwell, for him to hold and collect in due time to the extent of her indebtedness to him, her claim against the estate of her late husband, Clark H. Remick, incurred with her marriage with the said Clark H. Remick and by the marriage contract of date of August 10th, 1869, and amounting to the sum of seven
205 thousand dollars, hereby specially subrogating the said A. G. Maxwell to all her rights of action thereof to enforce its collection against the estate of said Clark H. Remick in case her said notes should not be duly paid at maturity; or on the termination of any extent that may be granted on said notes, or either of them, the said notes, after having been paraphed "*Ne varietur*" by me, the undersigned authority, for identification herewith, were handed to the said Maxwell, who acknowledges possession of the same.

And the said Albert G. Maxwell, having exhibited two mortgage notes in favor of Frank C. Remick dated June 5th, 1875, and endorsed in blank for two thousand dollars, with eight per cent. per annum interest from date until paid, and subscribed by C. H. Remick, and the other for the sum of fifteen hundred dollars, with like interest from date, and subscribed by Clark H. Remick and Joseph T. Labit, *in solido* declared unto me, the said notary, and the undersigned witnesses, that he was the lawful owner of said notes, and that in consideration of the said notes first above mentioned and identified herewith he hereby relinquishes all his rights as holder and owner of the said Frank Remick's notes to the mortgage given on a certain tract of land situated on Lake Peigneur and described in the mortgage act given to secure the payment of said Frank Remick's note and authorized the cancellation of said mortgage on said tract of land as well as on all the other property thereby affected and encumbered. He further declared that he also releases and discharges the said Lake tract of land from the pledge herein granted and by the said Mrs. Marceline C. Cavailhez of any right thereon arising from marriage contract before mentioned.

The parties dispensing with the production of the certifi-
206 cate required by article 3364 of the Revised Civil Code of this State, as well as of receipts of the collection of taxes, agree to exonerate me, the said notary public, from all liabilities in the premises.

Thus done and signed at my office, in said parish, in presence of Mrs. George M. Summers and Walter A. White, competent witnesses of said parish, who have signed also, after due reading of the whole, "four words interlined on the first page and six on the third page, before signing."

(Signed) MARCELINE C. CAVAILHEZ.
" ALBERT G. MAXWELL.

Witnesses:
(Signed) W. A. WHITE.
" GEO. W. SUMMERS.

(Sig.) LASTIE BROUSSARD,
Clerk, ex Officio Notary Public.

Recorded in Book "F," Mortgages, number 2981, page 582, November 10th, 1882.
(Sig.) GEO. W. SUMMERS,
D'y Clerk and Recorder.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify the foregoing to be a true and correct copy of the original on file and of record in this office. Given under my hand and seal this 23rd day of January, A. D. 1885.

ALCIDE LE BLANC,
D'y Clerk & Recorder.

207 Filed May 25th, 1885.

[SEAL.] LASTIE BROUSSARD, *Clerk.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

(18.)

Petition of Maxwell for Sale of Plantation.

To the honorable the judge of the 25th judicial district court in and for the parish of Vermilion, State of Louisiana:

The petition of Albert G. Maxwell, a resident of the parish of Vermilion and State of Louisiana, with respect shows:

That Mrs. Marceline C. Cavailhez, widow of Clark H. Remick, deceased, a resident of said parish and State, is justly and truly indebted unto him in the full sum of three thousand four hundred and eighty-eight dollars and fifty cents ($3,488.50), with eight per cent. per annum interest on the sum of one thousand eight hundred and thirty-nine dollars thereof from the 24th day of December, A. D. 1883, until payment, and the like rate of interest on the sum of one thousand six hundred and forty-nine $\frac{50}{100}$ dollars from December 24th, A. D. 1884, until payment.

The two notes evincing said indebtedness, together with a certified copy of an act of pledge granted by her in favor of petitioner on the 6th day of November, A. D. 1882, and with which act of pledge said notes are identified, are herewith filed and made part thereof.

208 Petitioner further shows that on the 22nd day of August, A. D. 1883, the said Marceline C. Cavailhez, widow aforesaid, in order to more fully secure the payment of said notes, did by public act before Lastie Broussard, Esq., clerk of the district court for Vermilion parish and *ex officio* notary public, affect a mortgage, hypothecate and encumber in favor of your petitioner the following-described property, to wit:

One certain tract of land lying and being situated in this parish, on the east side of the Bayou Vermilion, being the tract whereon is situated her residence, measuring ten arpents front by forty arpents deep, bounded above by Miller, Lyon & Co., below by Frank D. King, east by lands supposed to be vacant, and west by the Bayou Vermilion, with all the buildings — machineries situated thereon or appertaining thereto, said improvements being more fully and particularly described in the process verbal of the sale of the property of the succession of her said deceased husband, Clark H. Remick, a certified copy of which process verbal is herewith filed for reference.

A certified copy of the said act of mortgage of date of the 22nd of August, A. D. 1883, and which declares that the notes to be secured thereby are identified with the act of pledge of November, A. D. 1882, is herewith filed and made part and parcel thereof.

Petitioner further shows that said act of mortgage imports a con-

fession of judgment, and that he is entitled to have the said property seized and sold to satisfy his said demands.

He further shows that said notes are long since past due, and,
209 notwithstanding repeated amicable demand, said notes remain unpaid wholly and entirely.

The premises considered, petitioner prays that the sheriff of the parish of Vermilion be authorized and ordered to seize and take into his possession and sell the property mentioned and described in the said act of mortgage herewith filed, and together with all the improvements thereon situated or thereto appertaining, and that the proceeds thereof be applied to the settlement of his demands, and that his mortgage for the sum of one thousand eight hundred and thirty-nine dollars, with eight per cent. per annum interest from the 24th day of December, A. D. 1883, and for the further sum of one thousand six hundred and forty-nine dollars and fifty cents, with eight per cent. per annum interest from the 24th day of December, A. D. 1884, until payment, as well as for the costs incurred in these proceedings, be recognized and enforced, and he prays for general relief, &c., &c.

O'BRYAN & WHITE.
Att'ys for Petitioner.

(19.)

Order of Sale, Annexed to Pet. No. 18.

Considering foregoing application and annexed copy of act of mortgage and notes, it is ordered that a writ of seizure and sale do issue as prayed for, after the expiration of delays and giving of notices required by law.

Given at chambers, at Lafayette, La., this 21st day of May, A. D. 1885.

210 C. DE BAILLON,
Judge 25th Jud'l Dist., La.

Filed May 25th, 1885.

LASTIE BROUSSARD, *Clerk.*

Filed December 15th, 1898.

G. W. SUMMERS,
D'y Clerk of Court.

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

(20.)

Sheriff's Deed to Maxwell & Lacassaigne.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Be it remembered that on this Saturday, the (15th) fifteenth day of August, 1885, by virtue of an order of seizure and sale issued out of the honorable the twenty-fifth judicial district court in and for

the parish and State aforesaid, in suit entitled Albert G. Maxwell vs. Marceline Cavailhez, No. 6 of the docket of the district court of said parish, and to me directed—

I did seize all the rights, titles, interests, and demand of the defendant, Marceline Cavailhez, in and to the following-described property to satisfy said writ, to wit:

211 One certain tract of land lying and being situated in this parish on the east side of the Bayou Vermilion, being the tract upon which is situated the residence of defendant, measuring ten arpents front by forty arpents deep, bounded above by Miller, Lyons & Co., below by Emile Romero, east by —, and west by the Bayou Vermilion, with all the buildings and improvements, machineries, &c., thereon situated.

Having duly served a notice of seizure on said defendant, proceeded, after the legal delays had expired, to advertise the above and foregoing described property in the Meridional newspaper, published weekly in said parish, during 30 clear days, as required by law, to be sold on Saturday, the 18th day of July, 1885, for cash, to the last and highest bidder, at the hall of Abbeville Hook and Ladder Co., the place designated for a court-house, with benefit of appraisement, and on said Saturday, the 18th day of July, 1885, I, Joseph S. Nunez, sheriff in and for the parish and State aforesaid, did, on said day and date as aforesaid, repair to the court-house door, the place designated for making sheriff's sales of said parish, between the hours of 11 o'clock a. m. and 4 o'clock p. m., for the purpose of making said sale, and after first having caused said land to be appraised, as required by law, read in an audible and distinct voice to the bystanders the advertisement from the Meridional newspaper, showing the terms and conditions of said sale, as aforesaid, and also a certificate from Lastie Broussard, clerk and *ex officio* recorder of mortgages, showing the number and the nature of the mortgages affecting said property, proceeded to offer the same for sale, and after ordering said land, &c., for a reasonable length of time, and not being able

212 to obtain any bid thereon, I announced that said property would be re-advertised to be sold on 12 months' credit, according to law, said sale to take place on Saturday, August 15th, 1885, and on said day I again repaired to the court-house for the purpose of re-offering said property for sale for whatever it would bring on 12 months' credit, and again, having made the advertisement, certificate of mortgages from the clerk and *ex officio* recorder showing the different mortgages resting on said property, proceeded to offer the said land, together with all the buildings and improvements, machineries, &c., &c., thereon situated, and, after offering the same for a reasonable length of time, Messrs. Albert G. Maxwell and Laurent Lacassaigne, being the last and highest bidders, became the purchasers thereof for the price and sum of five thousand one hundred dollars ($5,100.00). The purchasers having settled all costs, State and parish taxes due upon the land, amounting to one hundred and ninety $\frac{71}{100}$ dollars, applied the balance of the purchase price in part payment of their respective mortgages and fur-

nished a bond in favor of the sheriff in the sum of six hundred dollars to secure him in event that the third opposition filed in said suit should be decided in favor of said opponents.

Now, therefore, I, Joseph S. Nunez, sheriff, do hereby sell, assign, transfer, and deliver in full property unto the said Albert G. Maxwell and Laurent Lacassaigne all the right, title, interest, and demand of defendant, Marceline Cavailhez, in and to the above-described property; to have and to hold the same unto them, said purchasers, their heirs and assigns, from and after the date thereof.

213 In testimony whereof I have signed these presents on this 17th day of August, A. D. 1885, in presence of Messrs. Alcide Le Blanc and George W. Summers, competent witnesses, who have signed their names hereto.

J. S. NUNEZ, *Sheriff.*

Witnesses:
ALCIDE LE BLANC.
GEO. W. SUMMERS.

Recorded in volume 1 of Sheriff Sales, number 2, page 2, August 21st, 1885.

GEO. W. SUMMERS,
D'y Clerk & Recorder.

[SEAL.]

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk Court.

(21.)

Sale from Maxwell to Lacassaigne of the Undivided Half Interest of said Property.

UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Vermilion. }

Be it known that on this the 22nd day of October, anno Domini one thousand eight hundred and eighty-five, before me, George W. Summers, d'y clerk of the district court, *ex officio* recorder and
214 notary public, duly commissioned and qualified as such, in and for the parish of Vermilion, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Albert G. Maxwell, of lawful age and a resident of the parish aforesaid, who declared that for and in consideration of the sum and price and on the conditions hereinafter set forth and expressed he had and by these presents he does grant, bargain, convey, assign, transfer, set over, and deliver in full property, and with full guarantee against all troubles, debts, mortgages, donations, alienations, evictions, or other encumbrances whatsoever, and with full subrogation to all his rights of action in warranty against any and all previous owners, unto Laurent Lacassaigne, also of lawful age and a resident of the city of New Orleans, this State, here present, accepting, acquiring, and purchasing for

himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following-described property, to wit, the undivided one-half interest in and to a certain tract of land lying and being situated in this parish, on the east side of the Bayou Vermilion, measuring ten arpents front by forty arpents deep, bounded north by Miller, Lyons & Co., south by Emile Romero, east by —, and west by the Bayou Vermilion, and containing in the aggregate four hundred arpents, more or less, together with the buildings, machineries, and improvements thereon situated, being the portion purchased by said vendor at sheriff's sale on the 15th day of August, A. D. 1885, and duly recorded in vol. 1 of Sheriff's Sales, under No. 2, page 2, August 21st, 1885:

215 To have and to hold the said above-described property unto him, the said Laurent Lacassaigne, his heirs and assigns forever, from and after the date thereof; and the said A. G. Maxwell, the vendor herein, his heirs, legal representatives, and assigns, will warrant and forever defend the title of the said Laurent Lacassaigne, his heirs and assigns, in and to the property herein conveyed, against the lawful claim or claims of himself and his heirs.

This sale is made and accepted for and in consideration of the price and sum of two thousand five hundred and fifty dollars cash, as legal current money of the United States of America, the receipt whereof is hereby acknowledged by the vendor, who grants a full discharge and acquittance thereof.

The parties have produced the certificate of mortgage required by article 3364 of the Revised Civil Code of Louisiana, thereto annexed and made part thereof. The purchaser assumes the payment of all taxes due on said property.

Thus done and passed at my office, at Abbeville, in said parish, in the presence of Messrs. Henry B. Lyons and Robert P. O'Bryan, competent witnesses of lawful age and residents of said parish, who have signed with the parties and me, clerk, *ex officio* recorder, and notary public, after the reading of the whole.

A. G. MAXWELL.
LAURENT LACASSAIGNE.
GEO. W. SUMMERS,
D'y Clerk & ex Officio Notary Public.

Witnesses:
H. B. LYONS.
R. P. O'BRYAN.

216 Recorder in vol. 1 of Conveyances, No. 603, folio- 739–741, October 23rd, 1885.

GEO. W. SUMMERS,
D'y Clerk & Recorder.

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk — Court.

(22.)

Certificate of Clerk of Non-alienation of said Property, Annexed to Sale No. 21.

STATE OF LOUISIANA,
Parish of Vermilion.

I hereby certify that the following mortgage appears of record in this office on the following-described property, to wit:

A certain tract of land lying and being situated in this parish, on the east side of the Bayou Vermilion, measuring ten arpents front by forty arpents deep, bounded north by Miller, Lyons & Co., south by Emile Romero, east by —, and west by the Bayou Vermilion, together with all the buildings, machineries, and improvements thereon situated.

1st. A legal mortgage in favor of State of Louisiana and parish of Vermilion for taxes due on said land for the year of 1885.

I further certify that there is no other mortgage of record and in force in this office.

217 Given under my official signature this 22nd day of October, A. D. 1885.

GEO. W. SUMMERS,
D'y Clerk of Court

[SEAL.]

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

23.

Marked "A" & "B."

Record Case No. 13234.

Supreme Court of the United States, October Term, 1891.

LAURENT LACASSAIGNE, Appellant,
vs.
FRANCOIS CHAPUIS, Testamentary Executor of Jeanne Caroline Cave Cavailhez, Deceased. } Term No., 188.

Appeal from the circuit court of the United States for the western district of Louisiana.

Filed October 8th, 1888.

218 *Record of Suit of Laurent Lacassaigne vs. Francois Chapuis, Executor, United States Supreme Court—Term Number*, 188—*Marked A & B.*

Record case No. 13234.

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Bill of Complaint.

To the honorable court of the United States for the western distri
of Louisiana:

Laurent Lacassaigne, an alien and a citizen of the Republic
France, brings this his bill of complaint against Francois Chapui
a citizen and subject of the Republic of Switzerland, in both h
capacity of testamentary executor of Jeanne Caroline Cave C
vailhez and in his individual capacity, residing in the city of Ne
Orleans, in the eastern district of Louisiana; and your orator, com
plaining, says that he is the owner of a certain plantation situate
in the parish of Vermilion, State of Louisiana, lying and being o
the east side of the Bayou Vermilion, having a front of ten arpen
on said bayou by a depth of forty arpents, with the buildings an
improvements thereon, bounded on the west by Bayou Vermilio
on the east by public lands, on the south by Emile Romero, an
north by property of Miller, Lyons & Co., together with all th
mules, horses, carts, cows, wagons, tools of husbandry, and othe
plantation equipments thereon.

Your orator shows that he acquired the ownership of said prop
erty with Albert G. Maxwell, of this district, in judicia
220 proceedings prosecuted in the district court for the parish o
Vermilion, in the suit of Albert G. Maxwell *vs.* Marcelin
Cavailhez, numbered 6 on the docket of said court, and by sheriff'
deed signed by Joseph S. Nunez, sheriff of said parish of Vermilio
dated August 15th, 1885. A duly certified copy of said deed i
hereto attached, made part thereof, and marked Exhibit "A." Th
said court is referred to and a transcript thereof will be produce
on the trial of the case.

Your orator shows that he acquired the interest of Albert G. Maxwe
in said property by act of sale passed before Geo. W. Summers, deput
clerk of the district court, *ex officio* recorder, and notary publi
duly commissioned and qualified in and for the parish of Vermil
ion, on the 22nd day of October, 1885, as will appear from a dul
certified copy of the act of sale hereto attached, made part there
and marked Exhibit "B;" that thereby the whole of the plantatio
became the property of and vested in your orator.

Your orator further shows that one Jeanne Caroline Cave Cavailhe
alleging herself to be a citizen of France and to be the widow o
Jean Baptiste Cavailhez, deceased, did, on or about the 5th day o
March, 1884, institute a suit in equity in this honorable court, si
ting at Opelousas, numbered 33 of the docket of said court, wherei
said Jeanne Caroline Cave Cavailhez was complainant and Marcelin
Cavailhez, widow of C. H. Remick, in her own right and as tutri
of her minor children Frank C. Remick, Mary Isabella Remick
Clement Arthur Remick, and Marceline L. Rita Remick, an
as tutrix administering the estate of C. H. Remick, deceased
was defendant; that in said suit the said Jeanne Carolin
221 Cave Cavailhez claimed, as the widow in community of Bap
tiste Cavailhez, to be the owner of one undivided half interes

in the above-described plantation, and that of the other undivided half interest in said plantation was burdened with a tacit mortgage to secure the sum of five thousand three hundred and ten dollars ($5,310), paraphernal property, due her by the succession of Baptiste Cavailhez; that the prayer of the complainant's bill is that the aforesaid plantation be decreed to be still the property of the estate of Baptiste Cavailhez in division; that the oratrix (meaning Jeanne Caroline Cave Cavailhez) be recognized as the owner of the one undivided half interest of said plantation, and that she be recognized as a mortgage creditor of said Baptiste Cavailhez in the sum of five thousand three hundred and ten dollars ($5,310), with legal interest from judicial demand on the undivided half thereof belonging to said Baptiste Cavailhez; that process was prayed for against Marceline Cavailhez, widow of C. H. Remick, in her individual capacity as tutrix of her minor children and as tutrix administering the estate of C. H. Remick, and against no other person; that the bill nowhere avers that the said Marceline Cavailhez, widow of C. H. Remick, was in possession of said plantation when the suit was filed, either for herself individually or as tutrix for her minor children or as tutrix administering the estate of C. H. Remick, deceased, or by agent or employee.

Your orator further shows that he and Albert Maxwell were mortgage creditors of said Marceline Cavailhez, widow of
222 said C. H. Remick, deceased; that her mortgage was duly recorded in the mortgage office of the parish of Vermilion at the time and before said suit numbered 33 on the docket of this court sitting at Opelousas was instituted, and that said recordation operated as notice to said Jeanne Caroline Cave Cavailhez and all the world, and that no right or interest of your orator or of Albert G. Maxwell could be passed on in said court or be affected by the decree therein made without their being made parties to said suit.

Your orator further shows that this hon. court was without jurisdiction to entertain said suit numbered 33 on the docket of this hon. court, sitting at Opelousas; and your orator is informed and believes and so charges that said Jeanne Caroline Cave Cavailhez, the plaintiff therein, was not a citizen of France, as she falsely alleged herself to be, to give this hon. court jurisdiction of the parties, but was a citizen of Louisiana, residing at New Orleans; that if it be true, as your orator has been informed, and believes and charges, it was a fraud practiced upon this court, and that the proceedings in said suit numbered 33 on the docket of this court are utterly null and void, and should not be pronounced and decreed to be so.

Your orator further shows that the judgment rendered in said cause on the — day of January, 1886, adjudged and decreed "that Jeanne Caroline Cave Cavailhez be recognized as the lawful widow of Baptiste Cavailhez, and as such be entitled to and decreed to be the owner of the undivided half interest of the property above described," together with other property, "and that Jeanne
223 Caroline Cave Cavailhez have judgment against the estate of Baptiste Cavailhez in the sum of five thousand three hundred and ten ($5,310) dollars, with legal interest from Feb'y 24th,

1884, and that her mortgage to secure the said sum and interest upon the property of Baptiste Cavailhez, to take effect from the 13th of April, 1863, be recognized and enforced. The record in said cause number 33 on the docket of this court is referred to, to be used on the trial of this cause; that thereafter, on the 2nd day of February, 1886, a petition was presented to this court for a writ of possession under said decree, and said petition was granted, and that a writ of possession did issue to the United States marshal for this district; that by said writ said marshal was ordered "to eject defendant (meaning Marceline Cavailhez, widow of C. H. Remick) and those who may be holding said property described as aforesaid under the said defendant by private deed of transfer or otherwise since the institution of the aforesaid suit, to wit, and during the pendency of said suit, and you are further ordered to put the said Jeanne Caroline Cave Cavailhez, widow, in full possession of the afore-described property as provided by law."

Your orator shows that said suit was not warranted by the decree which had been rendered in said cause and was not a proper writ, and that the same was issued improvidently and upon a wrongful suggestion and is null and void; that said pretended writ was executed on the 5th day of February, 1886, "by serving the writ and copy of judgment on Alfred Armentor, who was living in the house and had charge of the property, and he being a major, and I took possession of the said plantation and improve-
224 ments and then placed them in possession of F. Brulard, as the agent of Jeanne Caroline Cave Cavailhez," as will appear by the return of S. C. Price, deputy U. S. marshal, filed February 8th, 1886, in said record.

Your orator shows that he was in possession of said plantation as owner by his laborers, servants, and employees when said deputy U. S. marshal pretended to execute the aforesaid writ, and shows to this hon. court that one F. Brulard did come upon said plantation and does now occupy a portion of said dwelling on said plantation, but that the carpenters and laborers on said plantation have been continuously and still are in service and pay of your orator, and that your orator is deterred from going upon said plantation and exercising his rights of ownership by the violence and threats of said F. Brulard. Your orator claims to be in possession, though his possession is disturbed and interfered with by said Brulard acting under direction of and advice from the defendant, Francois Chapuis.

Your orator avers that he has not been a party to any suit and is not bound by any order of court until he has an opportunity to be heard.

Your orator shows that though the acts were in the name of Jeanne Caroline Cave Cavailhez, yet your orator is informed and believes, &c., so charges, that she was prompted and instigated to do all that she did do by the defendant herein, Francois Chapuis, who was named her testamentary executor and universal legatee under his last will & testament.

225 Your orator charges that the said Brulard is an agent and under the control of said Francois Chapuis, defendant, and of this hon. court; that the alleged writ under which he has taken partial possession is void; that the whole proceeding No. 33 on the docket of this court is null and void for want of jurisdiction of the parties; that the plantation is deteriorating in value, and the season for planting and preparing for crops is passing, and irreparable injury is being done to plaintiff; that an injunction *pendente lite* is necessary to restrain the defendant, Francois Chapuis, as testamentary executor and individually, the agents & employees, from interfering with the possession of plaintiff or molesting him or his agents and servants on said plantation; that — the said plantation, pending a motion to grant said injunction *pendente lite*, a restraining order should be issued, provided by law, the said injunction to be *be* made perpetual on a final hearing. Your orator avers that he is without a full, complete, a- adequate remedy at law, and must resort to a court of equity to have his rights determined and secured.

Wherefore your orator prays that the said suit numbered 33 of the docket of this court, sitting at Opelousas, may be declared an absolute nullity and all the proceedings under it void, because there was no injunction in this court over the parties; that in case said suit is decreed to have been properly brought in this court between the parties thereto, than that said suit be decreed to have no force nor effect against the plaintiff herein, he not having been a party to said suit No. 33 and the decree not operating against him,
226 and that the writ of possession under which one S. C. Price is acting as deputy U. S. marshal and one F. Brulard has been partially placed in possession is absolutely null and void and the possession of said Brulard illegal, and that he be ordered to vacate the premises occupied by him on said plantation and remove therefrom forthwith, and that an injunction *pendente lite* do issue from this court, to be made perpetual at the final hearing, commanding Francois Chapuis, testamentary executor & individually, his agents, servants, and employees generally, and one F. Brulard in particular, to desist from interfering or molesting plaintiff or his laborers, servants, and employees, and pending a motion to grant said injunction *pendente lite* that a restraining order issue, as provided by law, and for general relief.

And for subpœna to be directed to Francois Chapuis as testamentary executor of Jeanne Caroline Cave Cavailhez and individually, commanding him to appear by a certain time in a certain place to plead, answer, demur to the bill under a penalty to be fixed and to stand to, perform, and abide such further order and decree as may seem proper to this hon. court.

(Sig.) LAURENT LACASSAIGNE.

A. GOLDWAITHE &
W. S. BENEDICT, *Solicitors.*

THE STATE OF LOUISIANA, }
City of New Orleans. }

On this the 10th day of April, 1886, before me personally appeared Laurent Lacassaigne and made oath that he has read
227 the above bill and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Sig.) LAURENT LACASSAIGNE.

Sworn to and subscribed before me this 10th day of April, '86.

(Sig.) K. LEON,
Comm'r U. S. Cir. Court, East. Dist. of La.

Endorsement: No. 139. U. S. circuit court, western district of La. In equity. Laurent Lacassaigne *vs.* F. Chapuis, testamentary executor & individually. Bill of complaint. Filed April 15th, 1885. (Sig.) J. B. Beattie, d'y cl'k. A. Goldwaithe & W. S. Benedict, sol'rs — compl't.

By consent this case will be filed at Monroe, and all the notices required in the same are, and the court, by consent, will hear the matter at New Orleans at a day to be fixed by the judge hereafter.

(Sig.) ALECK BOARMAN, *Judge.*

Copy of Subpœna in Chancery.

UNITED STATES OF AMERICA:

(Eagle.)

The President of the United States to the marshal for the western district of Louisiana, Greeting:

You are hereby commanded to summon Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, widow
228 of Baptiste Cavailhez, and Francois Chapuis, individually, to appear before the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden at the city of Opelousas, Louisiana, on the first Monday of June, 1886, then and there to answer a bill in chancery filed against them, wherein Laurent Lacassaigne is complainant and said Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, widow of Baptiste Cavailhez, and Francois Chapuis, are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Monroe, La., this 17th day of April, in the year of our Lord one thousand eight hundred and eighty-six, and the 110th year of American Independence.

(Sig.) J. B. BEATTIE, *D'y Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of June, 1886; otherwise the bill may be taken *pro confesso*.

Endorsement: United States Supreme Court. No. 139. L. Lacassaigne *vs.* Francois Chapuis, testamentary executor, *et al.* Subpœna in chancery.

Marshal's Return on Subpœna in Chancery.

Marshal's return.

Received Apr. 23, 188–, by the United States marshal of the eastern district of Louisiana. On the 5th day of May, 1886, I
229 served a true copy of the within subpœna in chancery on Francois Chapuis, both as an individual and as testamentary executor of Jeanne Caroline Cave Cavailhez, widow Baptiste Cavailhez, in person, in the city of New Orleans.

(Sig.) R. B. PLEASANTS, *U. S. M'l*,
By JNO. E. LIVAUDAIS, *Deputy*.

Filed May 24th, 1886.
(Sig.) J. B. BEATTIE, *D'y Clerk*.

Demurrer.

U. S. Circuit Court, West. Dist. of La. In Equity.

LAURENT LACASSAIGNE
vs.
F. CHAPUIS, Testamentary Executor and Individually. } No. —.

The demurrer of F. Chapuis, as testamentary executor *of* and individually, defendants, to the bill of complaint of Laurent Lacassaigne, the above-named plaintiff.

These defendants, by protestation, not confessing any or all the matters and things in the plaintiff's bill of complaint to be true in such manner and form as the same is therein set forth and alleged, *both* demur to said bill, and for the cause of demurrer show*eth* that the plaintiff hath not in and by his said bill made or stated such a case as entitles him *to* a court of equity to any discovery from these defendants or to any relief against them as to the matters contained in the said bill or any of such matters.

Therefore, and for good divers other causes of demurrer
230 appearing in the said bill, the defendants *both* demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answers to the said bill, and pray*s* to be hence dismissed with their costs and charges in this behalf most wrongly sustained.

(Sig.) LEONARD, MARK*E* & BRUENN,
(") A. VOORHIES, *Sol'c'rs*.

In our opinion the above and foregoing demurrer is well founded in law.

(Sig.) LEONARD, MARKS & BRUENN, *Sol'c'rs.*
" ALBERT VOORHIES, *Solicitor.*

STATE OF LOUISIANA, }
City of New Orleans. }

Personally appeared Francois Chapuis, defendant above named, individually and as testamentary executor, who, being duly sworn, says that the above and foregoing demurrer is not interposed herein for any delay.

(Sig.) FS. CHAPUIS.

Sworn to and subscribed before me this 2nd day of July, A. D. 1886.

[Seal M. Voorhies, Notary Public, P'sh of Orleans.]

(Sig.) M. VOORHIES,
Notary Public.

Endorsement: No. 139. U. S. circuit court, western district of Louisiana. In equity. Laurent Lacassaigne *vs.* F. Chapuis,
231 testamentary executor and individually. Demurrer. Filed July 5th, 1886. (Sig.) C. Mayo, d'y clerk.

Plea to Jurisdiction.

U. S. Circuit Court, West. Dist. of La. In Equity.

LAURENT LACASSAIGNE }
vs. } No. —.
F. CHAPUIS, Testamentary Executor & Individually. }

The plea of F. Chapuis, testamentary executor and individually, defendants, to the bill of complaint of Laurent Lacassaigne, plaintiff.

These defendants, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of the said bill sa*ith* that, as is alleged and set forth in the bill of complainant therein, the plaintiff, Laurent Lacassaigne, is an alien subject of the Republic of France, and those defendants, F. Chapuis, individually and testamentary executor, are alien subjects of the Republic of Switzerland; that the act of March 3rd, 1875, U. S. Statutes, provides for and limits the jurisdiction of this court to certain classes and kinds of causes, as in said aforesaid act fully specified and set forth, and that this honorable court is therefore without jurisdiction in the premises.

All which matters and things these defendants *doth* aver to be

true, and they plead the same in bar of plaintiff's bill, and
232 they pray the judgment of this honorable court whether they should be compelled to make any other or further answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Sig.) LEONARD, MARKS & BRUENN, *Sol'c'rs.*
ALBERT VOORHIES, *Solicitor.*

STATE OF LOUISIANA, }
City of New Orleans. }

Personally appeared Francois Chapuis, defendant herein, individually and as testamentary executor, who, being duly sworn, says that the above and foregoing is true in point and fact.

FS. CHAPUIS.

Sworn to and subscribed to before me this 2nd day of July, A. D. 1886.

[Seal of M. Voorhies, Notary Public, P'sh of Orleans.]

(Sig.) M. VOORHIES,
Notary Public.

Endorsement: No. 139. U. S. circuit court, western district of Louisiana. Laurent Lacassaigne *vs.* F. Chapuis, testamentary executor and individually. Plea to jurisdiction. Filed July 5th, 1886. (Sig.) C. Mayo, d'y clerk.

EXHIBIT "1."

233 UNITED STATES OF AMERICA, }
State of Louisiana, Parish of St. Landry. }

To A. C. Gibson, U. S. marshal, western district of Louisiana, or any of his deputies, Greeting:

Whereas on the 11th day of January, 1886, the Hon. Aleck Boarman, sitting as judge of the fifth (5th) circuit court, western district of Louisiana, at the town of Opelousas, parish of St. Landry, Louisiana, did in a certain case entitled—

5th Circuit Court, West. Dist. of La.

JEANNE CAROLINE CAVE, Wdo., }
vs. } In Chancery.
MARCELINE CAVAILHEZ, Wdo., ET ALS. }

render a judgment and decree, of which a true and correct copy is hereunto annexed and made a part of this writ; and whereas said — was instituted on the fifth day of March, one thousand eight hundred and eighty-four: Now, therefore, — three days after service of this writ on Marceline Cavailhez, &c., defendant in above suit, she refuses to deliver the property described in the aforesaid judgment to the said Jeanne Caroline Cave, wdo., or to quit the property fully described in aforesaid judgment, *and* then in that case—

You are hereby ordered and commanded to eject defendant and those who may be holding said property described as aforesaid under the said defendant by private deed of transfer or otherwise since the institution of aforesaid suit, to wit, March 5th, 1884, and during the pending of said suit; and you are further ordered
234 to put the said Jeanne Caroline Cave, wdo., in full possession of the aforesaid described property as provided by law.

And you are further ordered to execute this writ in all respects as provided by law.

And how you shall have executed this writ and made due return to court, as provided by law, and thereon endorse the manner in which you shall have executed the same.

Witness the Hon. Aleck Boarman, judge of said court, this 2nd day of February, 1886.

(Sig.) C. MAYO,
D'y Clerk of U. S. Courts.

Filed Feb. 2nd, 1886.

(Sig.) C. MAYO, *D'y Clerk.*

Received the within writ of possession and a copy of judgment on the 3rd Feb., 1886, and I proceeded to the property described in within judgment, in Vermilion parish, and executed the same on the 5th Feb., 1886, by serving the writ and copy of judgment on Alfred Armentor, who was living in the house and had charge of the property, and he being a major, and I took possession of said plantation and improvements and then placed them in the possession of F. Brulard, as the agent of Jeanne Caroline Cave, widow.

(Sig.) S. C. PRICE,
Deputy U. S. Marshal.

Opelousas, Feb. 8th, 1886.

Returned and filed Feb. 10th, 1886.

235 (Sig.) C. MAYO,
D'y Clerk U. S. Court.

5th District Court, West. Dist. La. In Chancery.

JEANNE CAROLINE CAVE, Wdo., }
vs.
MARCELINE CAVAILHEZ, Wdo., &c. }

This case came up for trial, and the parties adduced their evidence. The said evidence and the law being in favor of oratrix, Jeanne Caroline Cave, widow Baptiste Cavailhez, deceased, as to her claims as surviving widow and creditor of his succession—

It is ordered, adjudged, and decreed:

1st. That the sale made on the 19th day of August, 1869, by Baptiste Cavailhez and Ernestine Diaz to Clarke H. Remick of the following-described property be annulled and avoided, the said property in said sale being described as follows, to wit:

First. A town lot in Abbeville, parish of Vermilion, being No.

33 — plat of said town, with buildings and improvements, said lot bounded west by Jefferson street, north by Concordia street, south by lot No. 34, and east by lot 41.

Secondly. A certain plantation situated on the east side of the Bayou Vermilion, in the aforesaid parish (Vermilion), with a front of ten arpents on said bayou by forty in depth, with buildings and improvements, bounded west by the Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and
236 north by property of Euclide Roy, together with said plantation, mules, horses, milk cows, carts, wagons, tools of husbandry, and other plantation paraphernalia.

2nd. It is ordered and decreed that the said oratrix and plaintiff in bill, Jeanne Caroline Cave, widow, be, and is hereby, recognized as the lawful widow of Baptiste Cavailhez, and as such that she be, and is hereby, entitled to and decreed to be the owner of the undivided half of all the property above described.

3rd. It is further ordered that the act of donation or dowry from Baptiste Cavailhez and Ernestine Diaz to Marceline Cavailhez, made on the 19th of August, 1869, be, and is hereby, decreed to be null and void and of no effect, and that Ernestine Diaz, the mother of defendant, Marceline Cavailhez, never was the lawful wife of Baptiste Cavailhez.

4th. It is further ordered and decreed that the said oratrix and plaintiff in bill have judgment against the estate of Baptiste Cavailhez in the sum of five thousand three hundred and ten dollars, with legal interest from the 25th day of February, 1884.

That her mortgage to secure the aforesaid sum and interest upon the property of Baptiste Cavailhez, to take effect from the 13th day of April, 1863, be recognized and enforced.

And because the law and the evidence is in favor of the defendant, Marceline Cavailhez, wdo. of Clark H. Remick, and as against the oratrix and plaintiff in bill as to the conventional demand for improvements she placed on the plantation—

It is further decreed that the defendant, Marceline Cavailhez, wdo. of C. H. Remick, have judgment against the oratrix
237 for the sum of fifteen hundred dollars, and to insure the payment thereof it is further decreed that she, the said defendant, have a privilege and mortgage on the property above described.

(Sig.) ALECK BOARMAN, *Judge.*

A true copy.

[Seal U. S. Circuit Court (Eagle) for the Western District of La.]

C. MAYO,
D'y Clerk U. S. Courts.

Marshal's Return on Writ of Possession.

I further certify that on the 10th day of April, 1886, an alias writ of possession was placed in the hands of the deputy marshal similar in all respects to the original writ, and the following is a true and correct copy of the return of the said deputy marshal on said alias writ of possession:

"Received the within writ and copy of judgment on the 10th day of April, 1886, and proceeded to the plantation within described, in Vermilion parish, and finding no one on whom to serve the same, except F. Brulard, formerly the agent of Jeanne Caroline Cave, wdo., and now agent of F. Chapuis, test. ex't'r, in full possession of the aforesaid plantation, with its appurtenances, and being the same party which I placed in possession of said plantation on the 5th of February, 1886, I hereby return this writ, together with the copy, this 13th day of April, 1886.

(Sig.) S. C. PRICE,
Dep-ty U. S. Marshal."

238 *Deputy Clerk's Certificate.*

OPELOUSAS, *May 24th*, 1886.

I hereby certify that the within and foregoing are true and correct copies of originals on file in my office.

[Seal U. S. Circuit Court (Eagle) for the Western Dist. of La.]

(Sig.) C. MAYO,
Dp. Clerk U. S. Courts.

Endorsement: A return.

EXHIBIT 2.

U. S. Circuit Court, Western Dist. of La.

LAURENT LACASSAIGNE } *vs.* } No. 139.
F. CHAPUIS, Executor, &c. }

STATE OF LOUISIANA, }
Parish of Vermilion. }

Before me, the undersigned attorney, appeared Alfred de Armentor, who, being duly sworn, deposes and says:

I was present when the U. S. marshal put Felix Brulard in possession of the Cavailhez plantation on the 5th day of February, 1886, with writ of possession. The office- gave notice to all to vacate the premises, and everybody complied without any resistance or protest, and Felix Brulard was thereupon put in peaceable possession. I am not now living on the Cavailhez place, but since the execution of the writ of possession I have made a contract
239 with Felix Brulard, as agent, to work a part of the place.

his
(Sig.) ALFRED DE x ARMENTOR.
mark.

Sworn to and subscribed before me this 30th day of June, A. D. 1886.

(Sig.) LASTIE BROUSSARD,
Clerk District Court.

{ Seal of the Clerk of the Parish of Vermilion, State of Louisiana (Pelican Feeding Young). }

Endorsement: 2. M. de Armentor.

EXHIBIT 3.

U. S. Circuit Court, West. Dist. of La.

LAURENT LACASSAIGNE
vs.
F. CHAPUIS.

STATE OF LOUISIANA,
Parish of Lafayette.

Before me, the undersigned, justice of the peace of the fourth ward of the parish of Lafayette, appeared Emile Romero, who, being duly sworn, disposes and says:

I reside in the parish of Vermilion. The U. S. deputy marshal appeared at my residence on the 5th day of February, 1886, and charged me to deliver unto Felix Brulard the keys and certain accounts, this said Felix Brulard being the duly authorized agent of F. Chapuis. Witness further says that the said Felix
240 Brulard has hereupon taken possession without any opposition, and has retained the same without any molestation or citation or notice whatsoever.

(Sig.) E. ROMERO.

Sworn to and subscribed before me this 1st day of July, 1886.

(Sig.) A. KAMIG,
Justice of the Peace.

C OF EXHIBIT 3.

I hereby authorize Mr. E. Romero to take full charge of the Remick plantation, now the property of Maxwell & Lacassaigne, and see to the just collection of and division of all crops between the present tenants of said plantation and said Maxwell & Lacassaigne. We wish the present tenants to know that the ⅓-portion agreement existing at present between outgoing parties & them will be fairly adjusted.

(Sig.) A. G. MAXWELL,
For M. & L.

D OF EXHIBIT 3.

D.

Laurent Lacassaigne, commission merchant, 213 Gravier street; P. O. box, 281.

NEW ORLEANS, *le* 30 *Dec.*, 1887.

Mons. Emile Romero, Abbeville.

MONS. & AMI: Par la presente Je Vous autorise s louer mon Habitation Remick, ades Tennents a la part ou en loyer en argent, payable d'avance. Tout locataire louant a la part, sera tenu de
241 se conformer aux ordes du gerant de l'habitation quel qu'il soit, Je desire que l'habitation soit occupee par des familles

(blancs ou noirs) mais honorables & bon travailleurs et que tous se sourmettent a vos desirs ou aux desirs de celui qui pourrait etre le gerant apres vous. Faites pour le mieux jusq'a ce que j'aille tous la pouvoir & que Je vous donne des pouvoirs absolu.

Esperant Mr. & Ami vous sur l'habitation sous peu.

Je suis vt. Sr. & Ami.

(Sig.) LAURENT LACASSAIGNE

STATE OF LOUISIANA, }
Parish of Vermilion. }

Emile Romero, sworn, says:

I was running the cotton gin on the plantation when the U. S. deputy marshal came the first time with the writ of possession. I held the authorization of Maxwell and Lacassaigne at first (exhibit marked C), and afterwards of Laurent Lacassaigne, marked D.

Mr. Stanberry was not on the place at the time nor since. The deputy marshal executed the writ, put Felix Brulard in possession of the whole plantation, ordering all persons under Lacassaigne to vacate, and afterwards we all made arrangements or contracts with Felix Brulard as agent of Wm. Cavailhez, to wit, myself, with reference to the cotton gin; Jean Brun, carpenter (who had employed Rand to assist him), to make necessary repairs, and the three laborers, Daniel & Louis Montgomery and A. de Armentor, to work.

Since said agreement the said carpenter, Brun, with his em-
242 ployee, Rand, worked, under control of Brulard, for Mrs. Cavailhez, and after her death for the executor, Chapuis; so also did the aforesaid laborers; all of which I know from information given me by the parties so employed themselves, as also since execution of first writ of possession Mrs. Cavailhez & Mr. Chapuis have, through their agent, F. Brulard, had absolute possession of the whole plantation.

(Sig.) E. ROMERO

Sworn to and subscribed before me, the undersigned authority, this 25th day of Mar., 1886, parish of Vermilion.

{ Seal of the Clerk of the Parish of Vermilion, State of Louisiana. (Pelican Feeding Young.) }

(Sig.) LASTIE BROUSSARD,
Clerk Dist. Court.

Endorsement: 3. E. Romero.

EXHIBIT 4.

U. S. Circuit Court, West. Dist. of La.

LAURENT LACASSAIGNE
vs.
F. CHAPUIS, Executor, &c. } No. 139.

STATE OF LOUISIANA,
Parish of Vermilion.

Before me, the undersigned authority, appeared Felix Brulard, who, being duly sworn, disposes and says: I am — present residing — Cavailhez plantation, in the capacity of agent for Jeanne Cavailhez at first, and presently F. Chapuis, executor. I was
243 put in possession by the U. S. deputy marshal on the 5th of February, 1886, since which time I have held the plantation in said capacity. The marshal executed the writ of possession and found no resistance whatever. He ordered the persons on the place to vacate, and they complied without protest or resistance.

(Sig.) F. BRULARD.

Sworn to and subscribed before me this 30th day of June, A. D. 1886.

(Seal of the Clerk of the Parish of Vermilion, State of Louisiana. (Pelican Feeding Young.))

(Sig.) LASTIE BROUSSARD,
Clerk Dist. Court.

STATE OF LOUISIANA,
Parish of Vermilion.

Felix Brulard, sworn, says: My name is Felix Brulard. I was the agent of Mrs. Wm. Cavailhez, and accompanied the deputy U. S. marshal who executed the first writ of possession. He caused the plantation (the Remick plantation) to be vacated, and put me in the actual possession of the whole plantation. Jean Brun, carpenter, was ordered off; and thereupon, by contract with me, he agreed to remain and work for Mrs. Wm. Cavailhez to make some urgent repairs, with the distinct understanding that I, as agent aforesaid, would pay him for his work from that date. He remained under my supervision and worked under my directions for some time, when he changed his manner and commenced defying my authority. Subsequently, the deputy U. S. marshal came
244 with Mr. Chapuis, executor, to execute a second writ of possession, and then said Brun and his employee, Rand, were turned out and immediately obeyed, and have not returned since.

When I was first put in possession I found 3 laborers, Daniel and Louis Montgomery and A. de Armentor, who had been there under my predecessor, represented by me, and they agreed to work under my superintendence for one year on contract. They have continuously worked under me on the place. The contract was verbal, in

the presence of witnesses, among them Mr. Romero. At execution of the second writ of possession, hearing that the two Montgomery had made affidavit that they were working for L. Lacassaigne, I had the matter squared up by having them ordered off; but they pleaded it was a mistake and they were sorry, so I had the original verbal agreement reduced to writing and had them to sign the same in presence of witnesses. I do affirm that from the date I received possession from the marshal I have had absolute control of the whole place all the time up to now without molestation, with the solitary exception of the fraudulent conduct of said carpenter, Brun, who, after working under the contract with me for considerable time and having entered there solely with my permission, nevertheless tried to change his position and to repudiate my authority, as above explained. As to Mr. Stanberry, I know nothing of him in connection with the plantation, and I have never been interfered with by him at any time. Carpenter Brun and his man Rand were ordered off by the deputy marshal and left on the spot at execution of second writ of possession. The executor, Chapuis, was put in possession, and myself with him as agent. Since
245 then L. Lacassaigne has never, directly or indirectly, controlled or attempted to control said plantation, in whole or in part, with the exception, however, of the fraudulent attempt of said Brun to change the position which he then really occupied.

(Sig.) F. BRULARD.

Sworn to and subscribed to before me, at office, this 25th day of May, 1886.

{Seal of the Clerk of the Parish of Vermilion, State of Louisiana. (Pelican Feeding Young.)}

(Sig.) LASTIE BROUSSARD,
Clerk of Dist. Court.

Endorsement: 4. F. Brulard.

EXHIBIT 5.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Louis Montgomery and Daniel Montgomery, sworn, says:

We are laborers on the Remick plantation, which the U. S. marshal delivered over to Felix Brulard, agent of Mrs. W'w Cavailhez when the first writ of possession was executed. Previous to that time we had been working under agreement with the agent of L. Lacassaigne. When Brulard took possession from the deputy marshal we had to leave or contract with him, Brulard, to stay and work on the place. This we did, and after the second writ of possession our agreement, which was at first verbal, was put to writing.

I do not remember what was written in the affidavit made
246 to be used by Laurent Lacassaigne, but the facts as stated here are true, and if the first affidavit does not state the facts as above, then it was a mistake. Everybody knows here after the

marshal's visit we have been working on this plantation under Felix Brulard, who has since had the possession of the place.

(Sig.) his LOUIS x MONTGOMERY. mark.

(Sig.) his DANIEL x MONTGOMERY. mark.

Sworn to and subscribed before me this 25th day of May, A. D. 1886.

[Seal Clerk of Parish of Vermilion.]

LASTIE BROUSSARD,
Clerk of Dist. Court.

Endorsement: 5. Louis Montgomery, Daniel Montgomery.

EXHIBIT 6.

U. S. C. C., Opelousas.

LAURENT LACASSAIGNE *vs.* F. CHAPUIS, Tes. & Ind. } No. —.

Exhibit of defendant.

1. Francois Chapuis, sworn, says: I am the executor of the estate of W'w Baptiste Cavailhez, and since her death, on March the 6th, A. D. 1886, I have been in possession of the plantation in dispute as the executor of her estate, and before that I acted as her 247 agent, and had Felix Brulard charged to go and take possession actually & in person from the U. S. marshal or deputy, while enforcing the original writ of possession in matter of the deceased *vs.* Mrs. W'w Remick and *al.*, No. — of the U. S. circuit court. The marshal actually put said Brulard in possession of the whole plantation in its entirety in accordance with the terms of the writ. All parties on the place were notified to vacate in favor of Mrs. W'w Cavailhez, and this was actually complied with. Since the execution of said writ plaintiff never had any control, direct or indirect, of said plantation, and the parties residing thereon, laborers, to wit, Louis Montgomery, Daniel Montgomery, and A. de Armentor, were allowed to remain on the place, by contract with said Brulard, from the date of said writ of possession for the term of one year, as will more fully appear by reference to the written contracts annexed hereto, marked "A" & "B." The carpenter, Jean Brun, was then ordered to vacate by the deputy marshal, but thereupon made an agreement with Brulard to continue the necessary repairs to the house and other buildings, with the stipulation that Mrs. W'w Cavailhez would pay him for all the work done by him since execution of writ. I went as the agent of W'w Cavailhez and remained several days on the plantation, and we were then in the uncontested

possession of whole plantation in its entirety. Shortly after suit was brought by said Lacassaigne in the U. S. circuit court of eastern district of Louisiana praying for injunction, and claiming falsely the possession of said plantation, and being simply disturbed, as alleged, in his employment.

The fact was that since the execution of the first writ of possession he never had a shadow of possession, but attempted
248 fraudulently to show that his employees had been constantly and were constantly in possession under his authority. Said pl'ff then took the testimony of two of said laborers, ignorant people, to show that they had never been interfered with in holding possession for him, while the truth is that the said laborers (Louis Montgomery and Daniel Montgomery, whose ordinary marks are affixed to the affidavit) have been, like the others, ordered to vacate, and subsequently contracted with Brulard to work on the place by the year for Mrs. W'w Cavailhez. They are at present cultivating under the superintendence of Brulard, under said contracts (Exh. A & B); told the other laborer, A. de Armentor. He refused to subscribe to plaintiff's affidavit, because of the facts above stated. At first their agreement with Brulard was verbal, but since the injunction suit or bill in equity aforesaid the said laborers, Louis & Daniel Montgomery and A. de Armentor, have executed the aforesaid labor contracts, and hence the plaintiff Lacassaigne has avoided again to take their affidavits in the present suit, instituted in the western district of Louisiana, and resorts again to the stale affidavits of said Louis & Daniel Montgomery, which came in such questionable shape.

Further, the carpenter, Jean Brun, was on the plantation, repairing the house, when the U. S. marshal executed the first writ of possession, and said Brun was notified to vacate; did cease to work on said place for complainant Lacas-aigne then and there, and afterward, by contract with Brulard, continued, as aforesaid, to work to necessary repair- for Mrs. W'w Cavailhez. This he did openly
249 and publicly, to my personal knowledge and to the acknowledgement of other persons present. His affidavit to the contrary was false and fraudulent, and a prosecution for perjury was therefore instituted against him before a criminal court of the parish of Vermilion. Owing to these fraudulent advices, a new writ of possession was issued in matter of Mrs. W'w Cavailhez *vs.* W'w Remick & *als.* after the death of said Mrs. W'w Cavailhez, and thereupon, as appears by the return of the U. S. marshal, I, as executor, was formally put in possession of said plantation, of which, however, my agent, Brulard, had always had full corporeal possession in its entirety, as above related, and thereupon all the persons upon said place, the said Brun and his co-carpenter and the three laborers aforesaid, were ordered to vacate, and then and there the said three laborers executed the said written contracts (Exh. A & B), which are but the written evidence of the verbal contracts under which they had remained on the premises since the execution of the first writ of possession. No prosecution- for perjury were made against said colored laborers, Daniel and Louis Montgomery, be-

cause they begged to be excused, affirming that their affidavits were made in error. Since the execution of the said 2nd writ of possession, I, defendant, as executor and as sole heir and universal legatee of the Mrs. W'w Cavailhez, have held and now hold actual possession of the whole of said plantation in its entirety. Everybody living thereon is there by special contract with me, and nobody not authorized by me can put his foot thereon. The affiant, Stanberry, never appears there. The carpenter, Brun, has disappeared
250 and never shows himself, and said three laborers are working as my employees under my agent, Brulard.

For further testimony I refer to my affidavit on file in the injunction suit in the eastern district of La. and to the affidavit of Mrs. W'w Cavailhez, also on file there. I refer also to the affidavit of Felix Brulard, living on the place since execution of the first writ of possession, and to those of E. Romero and A. de Armentor.

I was born in Switzerland, am a Swiss citizen, and have never been naturalized as a citizen of any other country.

(Sig.) FS. CHAPUIS.

Sworn to and subscribed before me this 22nd day of May, A. D. 1886.

[Seal M. Voorhies, Notary Public, P'sh Orleans.]

(Sig.) M. VOORHIES,
Notary Public.

Endorsement: G. F. Chapuis.

Minutes of Court.

Court met pursuant to adjournment.

LAURENT LACASSAIGNE
vs.
F. CHAPUIS, Testamentary Executor & Individually. } No. 139. Prayer for Injunction Denied. In Equity.

TUESDAY, *July 10th*, 1887.

Court met pursuant to adjournment.

LAURENT LACASSAIGNE
vs.
251 F. CHAPUIS ET ALS. } No. 139.

This cause came on to be heard upon the demurrer and plea, and was argued by counsel and submitted and same taken under advisement.

1st Decree.

U. S. Circuit Court.

LAURENT LACASSAIGNE
vs.
F. CHAPUIS, Test'y Ex't'r & Individually. } No. 139. In Equity.

This cause came on to be heard on application for injunction on affidavits filed and on argument of counsel for complainant and for defendants, and, considering same, the court concludes that the application for injunction should be denied, and it is therefore ordered, adjudged, and decreed that the restraining order hereinbefore made be set aside and vacated, and that the prayer for injunction be denied, this cause having by agreement been submitted to the court to be decided at any subsequent time in chambers.

Done and signed in chambers this August 19th, 1886.

[Seal U. S. Circuit Court (Eagle Bird) for the Western District of La.]

(Sig.) ALECK BOARMAN,
U. S. Judge.

Endorsement: No. 139. Laurent Lacassaigne *vs.* F. Chapuis, test'y ex't'r. Decree. Filed August 25th, '86. E. J. Nolan, d'y clerk.

252 *2nd Decree.*

U. S. Circuit Court, Western District La. In Equity.

L. LACASSAIGNE
vs.
F. CHAPUIS, EX'T'R, ET AL. } No. 139.

In this case, by reason of law, it is ordered, adjudged, & decreed that demurrer be sustained, & that plaintiff's bill be dismissed.

Done & signed, at Shreveport, this the 8th day of August, 1887.

(Sig.) ALECK BOARMAN, *Judge.*

Endorsement: No. 139. L. Lacassaigne *vs.* F. Chapuis, ex't'r, *et al.* Decree. Filed August 8th, '87. E. J. Nolan, d'y cl'k.

U. S. Circuit Court, Western District of Louisiana.

LAURENT LACASSAIGNE
vs.
FRANCOIS CHAPUIS, Testamentary Executor of Jeanne Caroline Cave Cavailhez, Deceased. } No. —.

To the honorable the circuit court for the western district of Louisiana:

The petition of Laurent Lacassaigne, with respect, represents:

That a final decree was rendered in this case on the eighth
253 day of August, 1887, sustaining the demurrer of the defendant,

Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, to the bill of complaint and dismissing said bill.

Your petitioner has been advised that there has been an error in the said decree, whereby he is injured, and he prays for an order allowing him to appeal therefrom to the next term of the Supreme Court of the United States, returnable on the second Monday of October next, and that the defendant, Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, be cited according to law, the said appeal not to act as a supersedeas, and upon such bond as may be proper and conditioned as the law requires.

ALFRED GOLDWAITHE,
Solicitor for Lacassaigne.

Order.

The appeal prayed for is allowed upon the petitioner, Laurent Lacassaigne, giving bond in the sum of five hundred dollars, according to law, the appeal not to act as a supersedeas.

In chambers, at Macon, August 7th, 1888.

L. Q. C. LAMAR,
Associate Justice of the Supreme Court of the United States, Assigned to the 5th Judicial Circuit Court of the United States.

(Endorsed:) U. S. circuit court, western district of Louisiana. Laurent Lacassaigne *vs.* Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez. Petition for appeal. Filed Aug. 31st, '88. E. J. Nolan, d'y cl'k. A. Goldwaithe, sol'r for pl'ff.

254 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a petition and order for appeal entered and filed in the clerk's office of the circuit court of the United States for the fifth *district* and the western district of Louisiana, in a suit wherein Laurent Lacassaigne, complainant, is appellant and Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, defendant, is appellee, to show cause, if any there be, why the decree rendered against the said Laurent Lacassagne, as in said petition and order for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the

Supreme Court of the United States, this 7th day of August, in the year of our Lord one thousand eight hundred and eighty-eight.

L. Q. C. LAMAR,
Judge, Associate Justice of the Supreme Court of the United States, Assigned to the Fifth Judicial Circuit of the United States.

255 (Endorsed:) United States circuit court, western district of Louisiana. No. 139. Laurent Lacassaigne *vs.* Francois Chapuis, testamentary executor, &c. Citation. Filed Aug. 31st, '88. E. J. Nolan, d'y cl'k.

Marshal's Return.

Received the within citation on the first day of September, 1888, and on the sixth day of the same month and year I made service of same by handing a certified copy of within citation to Mrs. Charles Leobnitz in person, a person over the age of 14 years and living in the same house with Francois Chapuis, said service having been made at the usual domicile of Francois Chapuis, in the parish of Vermilion, La.

S. C. PRICE,
D'y U. S. Marshal.

Filed Sept. 18th, '88.

E. J. NOLAN, *D'y Clk.*

On the 22nd day of September I served a certified copy of this citation on A. H. Leonard, attorney, by leaving same in his hands; service made in the city of Shreveport, La.

GEO. W. WEAKS, *D'y Mar.*

Filed Sept. 3rd, '88.

E. J. NOLAN, *D'y Clk.*

UNITED STATES OF AMERICA:

Know all men by these presents that we, Laurent Lacas-
256 saigne and W. S. Benedict, are held and firmly bound, jointly and severally, unto Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 28th day of July, in the year of our Lord eighteen hundred and eighty-eight.

Whereas the said Laurent Lacassaigne having heretofore, to wit, on the 28th day of July, 1888, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the eighth day of August, 1887, by the circuit court of the United States for the fifth circuit, holding sessions in and for the western

district of Louisiana, in the suit of Laurent Lacassaigne *vs.* Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, No. — of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Laurent Lacassaigne shall prosecute his said appeal to effect and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

L. LACASSAIGNE, [L. S.]
By A. GOLDWAITHE. [L. S.]
W. S. BENEDICT. [L. S.]

Signed, sealed, and delivered in the presence of—

257 (Endorsed:) No. 139. United States circuit court, western district of Louisiana. Laurent Lacassaigne *vs.* Francois Chapuis, testamentary executor, &c. Bond for appeal. Filed August 31st. 1888. E. J. Nolan, d'y cl'k.

UNITED STATES OF AMERICA, }
Eastern District of Louisiana, } *ss:*

Personally appeared W. S. Benedict, who, being duly sworn, deposes and says that he is the surety of the within bond; that he resides at 352 Josephine St., city of New Orleans, and is worth the full sum of five hundred dollars over and above all his debts and liabilities and property exempt from execution.

W. S. BENEDICT.

Subscribed and sworn before me this 20th day of July, 1888.

[Seal Richard H. Downing, Notary Public, Parish of Orleans, La.]

R. H. DOWNING,
Notary Public.

I approve the foregoing bond and sureties.

L. Q. C. LAMAR,
Associate Justice of the Supreme Court of the United States.

UNITED STATES OF AMERICA, }
5th Circuit, Western District of Louisiana. }

In Circuit Court.

258 I, John W. Wheaton, clerk of the said court, hereby certify the above and foregoing forty-eight pages, from 1 to 48, inclusive, contain a true, faithful, and complete transcript of all documents filed, orders made, proceedings had, & evidence adduced in case of Laurent Lacassaigne *vs.* F. Chapuis, testamentary executor and individually, in equity, No. 139 on the docket of said court.

Given under my hand and seal of office this the — day of —, A. D. 1888.

[Seal U. S. Circuit Court for the Western District of La.]

J. W. WHEATON, *Clerk.*

UNITED STATES OF AMERICA, }
5th Circuit, Western District of Louisiana. }

I, Aleck Boarman, judge of the circuit and district courts, 5th circuit and western district of Louisiana, the same being a court of record, do hereby certify that John W. Wheaton, whose official signature and seal are affixed to the foregoing certificate, is and was at the time he signed the same the clerk of the United States circuit court and district courts, duly commissioned and qualified. I further certify that the foregoing attestation of the said clerk is in due form and by the proper officer and is entitled to full faith and credit.

This done and signed in —— this the — day of ——, A. D. 1888.

ALECK BOARMAN, *Judge.*

259 UNITED STATES OF AMERICA, }
5th Circuit, Western District of Louisiana. }

I, John W. Wheaton, clerk of the United States circuit and district courts, 5th circuit and western district of Louisiana, do hereby certify that the Honorable Aleck Boarman is and was at the time he signed the same judge of the circuit and district courts of the United States for the 5th circuit and western district of Louisiana, duly commissioned and qualified.

Witness my hand and the seal of the said court this the — day of ——, A. D. 1888.

[Seal U. S. Circuit Court for the Western District of Louisiana.]

J. W. WHEATON, *Clerk.*

Endorsed on cover: Case No. 13,234. W. Louisiana C. C. U. S. No. 188. Laurent Lacassaigne, appellant, *vs.* Francois Chapuis, testamentary executor of Jeanne Caroline Cave Cavailhez, deceased. Filed October 8th, 1888.

I do hereby certify that the above forty-eight pages from 1 to 48, inclusive, contain a true, faithful, and complete transcript of all documents filed, orders made, proceedings had, and evidence adduced in case of Laurent Lacassaigne *vs.* F. Chapuis, test. ex'r and individually, in equity, No. 139 of the docket of this court.

Given under my hand and seal of office this 3rd day of —, 1893.

B. BLOOMFIELD,
Dep'y Clerk U. S. Circuit Court,
Western District of Louisiana.

260 [SEAL.]

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

Writ of Possession, Marked "D."

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Vermilion.

To A. G. Gibson, U. S. marshal, western district of Louisiana, or any of his deputies, Greeting:

Whereas on the 11th day of January, 1886, the Honorable Aleck Boarman, sitting as judge of the fifth (5th) circuit court, western district of Louisiana, at the term of Opelousas, parish of St. Landry, did in a certain case entitled—

5th Circuit Court, Western District of Louisiana. In Chancery.

JEANNE CAROLINE CAVE, Wdo.,
vs.
MARCELINE CAVAILHEZ, Wdo., ET ALS.

under a judgment and decree of which a true copy is hereunto annexed and made a part of this writ; and whereas said suit was instituted on the 5th day of March, one thousand eight hundred and eighty-four:

Now, wherefore, if three days after service of this writ on Marceline Cavailhez, wdo., &c., defendant in the above suit, she
261 refuses to deliver the property described in the above-said judgment to the said Jeanne Caroline Cave, widow, or to quit the property fully described in aforesaid judgment, then and in that case—

You are hereby ordered and commanded to eject the defendant and those who may be holding said property, described as aforesaid, under the said defendant by private deed of transfer or otherwise since the institution of aforesaid suit, to wit, March 5th, 1884, and during the pendency of said suit, and you are further ordered to put the said Jeanne Caroline Cave, wdo., in full possession of the aforesaid described property, as provided by law.

And you are further ordered to execute this writ in all respects as provided by law.

And after you have executed this writ make due return to the court, as provided by law, and hereon endorse the manner in which you shall have executed the same.

Witness the Honorable Aleck Boarman, judge of said court, this 2nd day of February, 1886.

C. MAYO,
Deputy Clerk U. S. Courts.

Filed Feb'y 2nd, 1886.
C. MAYO,
Deputy Clerk.

B. BLOOMFIELD,
Deputy Clerk U. S. Courts.

[SEAL.] A true copy.
Attest:

B. BLOOMFIELD,
Deputy Clerk U. S. Courts.

262 25.

Return of United States Marshal on Writ of Possession, Annexed to Document Marked 24.

Received the within writ of possession and a copy of judgment on the 3rd of February, 1886, and proceeded to the property described in within judgment, in Vermilion parish, and executed the same on the 5th day of February, 1886, by serving the writ and copy of judgment on Alfred Armentor, who was living in the house and had charge of the property and he being a major, and I took possession of said plantation and improvements, and then placed them in possession of F. Brulard, as the agent of Jeanne Caroline Cave, widow.

S. C. PRICE,
Deputy U. S. Marshal.

Opelousas, Feb. 8th, 1886.

Returned and filed Feb. 10th, 1886.

C. MAYO,
Deputy Clerk U. S. Courts.
B. BLOOMFIELD,
Deputy Clerk U. S. Circuit Court.

[SEAL.]

A true copy.
Attest:

B. BLOOMFIELD,
Deputy Clerk U. S. Circuit Court.

26.

Return of United States Marshal on Alias Writ of Possession, Annexed to Document Marked 24.

263 I further certify that on the 10th day of April, 1886, an alias writ of possession was placed in the hands of the deputy marshal similar in all respects to the original writ, and the following is a true and correct copy of the return of said deputy marshal on said alias writ of possession:

Received within writ and copy of judgment on the 10th day of April, 1886, and proceeded to the plantation within described, in Vermilion parish, and finding no one *to* whom to serve the same except F. Brulard, formerly the agent of Jeanne Caroline Cave, widow, and now agent of F. Chapuis, test. ex't'r, in full possession of the aforesaid plantation and its appurtenances, and being the same party whom I placed in possession of said property on the 5th day of February, 1886—

I hereby return this writ, together with the copy, this 13th day of April, 1886.

S. C. PRICE,
Deputy U. S. Marshal.
B. BLOOMFIELD,
Deputy Clerk U. S. Circuit Court.

A true copy.
Attest:
[SEAL.]

B. BLOOMFIELD,
Deputy Clerk U. S. Circuit Court.

Filed December 15th, 1893.

GEO. W. SUMMERS,
Deputy Clerk.

264 Filed Dec. 15, '97.

JOS. G. LE BLANC,
Dy Clerk of Court.

27.

Record of Succession of Jeanne Caroline Cave, Widow of Jean Baptiste Cavailhez, Marked "I."

STATE OF LOUISIANA:

Civil District Court, Parish of Orleans.

Succession of JEANNE C. CAVE, Wid. Baptiste Cavailhez. No. 17091.

Copies of petition, orders, oath, and letters testamentary in the above succession.

ALBERT VOORHIES,
LEONARD, MARKS & BRUEN,
Attorneys.

STATE OF LOUISIANA:

Civil District Court, Parish of Orleans, Div. "E."

Succ'n JEANNE C. CAVE, Wid. Baptiste Cavailhez. No. 17091.

265 *Petition. Filed March 8th, 1886.*

To the hon. civil district court of the parish of Orleans:

The petition of F. Chapuis, of New Orleans, respectfully represents—

That Wid. Jeanne Caroline Cavailhez, born Cave, a resident of the city of New Orleans, has departed this life in said city on the 6th day of March, 1886, leaving no ascendants nor descendants nor any collateral heirs within the limits of the jurisdiction of this honorable court.

That she has left a mystic will containing the annexed package and petition, who is appointed in said instrument as testamentary executor, with seizen desires to have said will probated.

Wherefore petitioner prays that said package be opened in court, said will proven and homologated, and your petitioner appointed testamentary executor, with seizen of estate, without furnishing bond and securities.

Prays for general relief; and as in duty bound, &c.

(Signed) ALBERT VOORHIES.
(") LEONARD, MARKS & BRUEN.

Order.

Let the last will and testament of the deceased be proved before me forthwith.

New Orleans, March 10th, 1886.

(Signed) HENRY LAZARUS, *Judge.*

266 *Order.*

The last will and testament of the deceased having been duly proved before me, let Francois Chapuis be therefore confirmed as testamentary executor, with seizen, of her estate, and without bond, and let letters issue to him as such upon his taking the oath according to law.

New Orleans, March 10th, 1886.

(Signed) HENRY L. LAZARUS, *Judge.*

Oath of Francois Chapuis, Testamentary Executor. Filed March 10th, 1886.

STATE OF LOUISIANA:

Civil District Court, Parish of Orleans, Div. "E."

Succ'n JEANNE C. CAVE, Widow Baptiste Cavailhez. No. 17091.

Before me, Jules Vienne, deputy clerk of this civil district court for the parish of Orleans, personally came and appeared Francois Chapuis, who solemnly swears that he will well and faithfully perform all and singular the duties of testamentary executor of the last will and testament of Jeanne C. Cave, wid. of Baptiste Cavailhez, so help him God.

(Signed) F. CHAPUIS.

Sworn to and subscribed before me, New Orleans, March 10th, 1886.

(Signed) JULES VIENNE,
Deputy Clerk.

267 [SEAL.]

Letters Testamentary. Filed March 11th, 1886.

STATE OF LOUISIANA:

Civil District Court, Parish of Orleans, Div. "E."

Succ'n of JEANNE C. CAVE, Wid. Baptiste Cavailhez. No. 17091.

To all — whom these presents may come, Greeting:

Whereas Francois Chapuis, named and appointed testamentary executor of the last will and testament of Mrs. Jeanne C. Cave, widow Baptiste Cavailhez, deceased, has applied to the civil district court for the parish of Orleans, by petition, praying said court to grant letters testamentary therein:

Now, know ye that the said Francois Chapuis is hereby authorized and empowered to collect all the goods and effects which were of said Jeanne C. Cave, wid. Baptiste Cavailhez, deceased, and to make a just inventory thereof, and all other lawful acts to do and perform as testamentary executor of the said last will and testament.

Witness our hand and the seal of our said court, at the city of New Orleans, this 11th day of March, in the year of our Lord one thousand eight hundred and eighty-six, and the one hundred and tenth of the Independence of the United States of America.

268 (Signed) HENRY L. LAZARUS, *Judge.*
" JULES VIENNE, *Dy Clerk.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Civil District Court for the Parish of Orleans.

I, W. J. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing five pages do contain true and correct copies of petition, orders, oath, and letters testamentary in the succession of Jeanne C. Cave, wid. Baptiste Cavailhez, and numbered 17091 of the docket of this court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this the 2nd day of July, in the year of our Lord one thousand eight hundred and eighty-six, and in the 110th year of the Independence of the United States of America.

[SEAL.] W. J. McGEEHAN, *Clerk.*

I, A. L. Tissot, presiding judge of the civil district court for the parish of Orleans, do hereby certify that W. J. McGeehan is the clerk of said court; that the same is a court of record, having probate jurisdiction, and that the signature of W. J. McGeehan, clerk, to the foregoing certificate is in the proper handwriting of him, the said W. J. McGeehan, clerk, — to his official act as such full faith and credit are due and owing, and I do further certify that his attestation is in due form of law.

269 Given under my hand, at the city of New Orleans, on the 2nd day of July, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL.] A. L. TISSOT, *Judge.*

I, W. J. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that A. L. Tissot, whose genuine signature — to the foregoing certificate, is now and was at the time of signing the same presiding judge of the civil district court for the parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this 2nd day of July, 1886.

[SEAL.] W. J. McGEEHAN, *Clerk.*

Filed Dec. 15th, 1893.

GEO. W. SUMMERS,
D'y Clerk of Court.

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

28.

Record No. 33 of the United States Circuit Court in Suit of Jeanne Caroline Cave vs. Marceline Cavailhez.

Bill in chancery.

270 To the hon. judge of the circuit court for the western district of Louisiana, holding session at Opelousas:

Jeanne Caroline Cave, widow of Baptiste Cavailhez, a citizen of France, brings this her bill in equity against Marceline Cavailhez, widow of C. H. Remick, in her own right and as tutrix of her minor children, Frank C. Remick, Mary Isabella Remick, Clement Arthur Remick, and Marceline L. Rita Remick, and as tutrix administering the estate of C. H. Remick, deceased, citizens of the State of Louisiana and residing in the parish of Vermilion; and your oratrix avers:

1. That she was lawfully married unto said Baptiste Cavailhez on the 10th day of December, 1833.

2. That said Baptiste Cavailhez during the existence of said marriage purchased and became the owner of the following properties, to wit:

First. A town lot in Abbeville, parish of Vermilion, being number 33 of plat of said town, with buildings and improvements; said lot bounded west by Jefferson street, north by Concordia street, south by lot number 34, and west by lot number 41.

Secondly. A certain plantation situated on the east side of Bayou Vermilion, in aforesaid parish, with a front of ten arpents on said bayou by forty arpents in depth, with buildings and improvements, bounded west by Bayou Vermilion, east by public lands, south by property of Numa S. Julien, and north by property of Euclide Roy, together with said plantation, mules, horses, milch cows, carts, wagons, tools of husbandry, and other plantation paraphernalia.

271 3. That said purchases, which took place, respectively, on 13th day of April, 1863, and on the 3rd day of January, 1862, became communitive property between said Baptiste Cavailhez and your oratrix, and from said dates, respectively, burdened with tariff mortgage to secure the reimbursement of all the moneys received for her and from her by her said husband and converted to his own use.

4. That, in the meantime, as oratrix is informed and avers, the said Baptiste Cavailhez illegally contracted matrimony with Ernestine Diaz, since deceased, which said marriage was an absolute nullity, as said Baptiste Cavailhez was at the date thereof the lawful husband of your oratrix.

5. That of said illegal marriage there was born the said Marceline Cavailhez, now widow of C. H. Remick.

6. That said Baptiste Cavailhez, combining and confederating with said Ernestine Diaz, C. H. Remick, and Marceline Cavailhez for the purpose of defeating the aforesaid rights of your oratrix and of transferring to the issue of said unlawful wife all his succession, did on 19th August, 1869, appear before the recorder of the parish of St. Martin and then and there execute the following act, to wit:

First. An act of sale of the aforesaid property by said Baptiste Cavailhez to said C. H. Remick for the nominal sum of $15,000, &

Secondly. A marriage contract between said C. H. Remick and Marceline Cavailhez, in which act the said Baptiste Cavailhez and Ernestine Diaz settled on the dowry of said Marceline Cavailhez a promissory note of $7,000, which constituted a part of the
272 stipulated price of $15,000 in the above-mentioned act of sale: all of which will more fully appear by reference to both of said acts, which are annexed a part hereof.

7. That said stipulation price of fifteen thousand dollars was merely nominal, and said amount was never paid nor was it intended between the parties to said two acts that it should ever be paid.

8. That the purpose of said acts was simply to divert the property of the estate of said Baptiste Cavailhez before his death, so as to defeat the rights of recovery of the legal widow of said Baptiste Cavailhez and to benefit exclusively the daughter of the unlawful wife, and said acts are consequently null and void, in *fraudum legis*.

9. Further, that the succession of your oratrix's said husband, Baptiste Cavailhez, is indebted unto her in the various sums of money which her said husband had, in the course of her said marriage, received for her and from her, which funds were her separate paraphernal property, to wit:

About the year 1842 the sum of twelve hundred dollars, and subsequently, at different intervals of time, the sum of eight hundred dollars, of four hundred dollars, of one hundred and ten dollars, of four hundred dollars; also, while trading in Mexico in 1844, the sum of two thousand dollars, and afterwards by bill of exchange on Paris, France, two hundred dollars, in 1846, making a total of five thousand three hundred and ten dollars ($5,310.00).

10. That said Baptiste Cavailhez dies on — day of April, A. D. 1882.

11. That said matters herein alleged are without relief
273 unless on the equity side of this honorable court.

Wherefore your petitioner prays for citation against the said Marceline Cavailhez, widow of C. H. Remick, dec'd, in her individual capacity as tutor of her said children and as tutrix ad-

ministering the estate of C. H. Remick aforesaid; that said acts of sale and marriage contract passed before the recorder of St. Martin on the 19th day of August, 1869, be decreed null and void; that your oratrix be recognized as the widow of said Baptiste Cavailhez, and his lawful wife up to the date of his death; that the marriage between said Baptiste Cavailhez and Ernestine Diaz, both now deceased, be declared absolutely null and void; that the aforesaid town lot and plantation be decreed to be still the property of the estate of Baptiste Cavailhez; that your oratrix be recognized as the owner of one undivided half of said town lot and plantation; that she be recognized as a mortgage creditor of said Baptiste Cavailhez in the sum of five thousand three hundred and ten dollars ($5,310.00), with legal interest from judicial demand, on the undivided half thereof belonging to said Baptiste Cavailhez.

And your oratrix prays for general relief, and as in duty bound, etc.

CAROLINE CAVAILHEZ, NÉE CAVE.

ALBERT VOORHIES,
F. VOORHIES, *Solicitors.*

Sworn to and subscribed before me this 25th day of February, A.D. 1884.

[SEAL.] M. VOORHIES,
Notary Public.

274 Filed March 5th, 1884.
W. F. ANDERSON, *D'y Clerk.*

A true copy.
[SEAL.] C. MAYO,
D'y Clerk U. S. Courts at Opelousas, La.

Filed Dec. 15th, 1893.
GEO. W. SUMMERS, *D'y Clerk.*

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

29.

Sale from J. B. Cavailhez to C. H. Remick, Annexed to Bill in Chancery No. 28.

STATE OF LOUISIANA, }
Parish of St. Martin. }

Be it known, on this nineteenth day of August, A. D. one thousand eight hundred and sixty-nine, before me, John D. Broussard, recorder, *ex officio* notary public in & for the parish of St. Martin, undersigned, and in the presence of the witnesses hereinafter named, also undersigned, personally came and appeared Baptiste Cavailhez and Ernestine Diaz, herein duly assisted by him, both of the parish

of Vermilion, in this State, who declared for and in consid-
275 eration of the conditions hereinafter set forth they do by these presents grant, bargain, sell, transfer, assign, and set over, with all legal warranties and with subrogation and substitution to all their rights and actions of warranty against all former owners, unto C. H. Remick, also of the parish of Vermilion, here present, purchasing for himself, his heirs and assigns, and acknowledging possession and delivery thereof:

1st. A town lot situated in the town of Abbeville, parish of Vermilion, being lot No. 33 (thirty-three) of the plat of the town of Abbeville, together with all the buildings, constructions, and fences thereon erected and thereto belonging; said lot bounded on the western side by Jefferson St., on the north by Concordia street, east by lot number thirty-four (34), now belonging to Cestia Fontelieu, freres, east by lot No. 41 (forty-one), presently occupied by Voorhies Trahan and Paulin Fontelieu.

2nd. A certain plantation situated — east side of Bayou Vermilion, having a front of ten arpents on said bayou by forty arpents in depth, together with all the buildings and fences thereon erected and thereto belonging, bounded on the western side by the public lands, on the southern side by the property of Numa St. Julien, and on the northern side by the heirs of Euclide Roy, together with said plantation, all the mules, horses, milch cows, carts, wagons, tools of husbandry, and generally everything now on it and appertaining to the same, with the exception, however, of the crops now being raised, which *is* not included in the sale.

3rd. This sale is made for and in consideration of the price and sum of fifteen thousand dollars, payable as follows, to wit, the sum of seven thousand dollars payable on demand, and for which amount the purchaser has this day subscribed his note, payable to bearer and bearing eight per cent. interest from and after the first
276 day of October next, 1869, and for the balance of the price purchase, to wit, the sum of eight thousand dollars, the purchaser binds and obligates himself to pay the same in four equal installments at one, two, three, and four years from date, and for which amount he has this day executed his four promissory notes, payable respectively to the bearer or bearers in one, two, three, and four years from date, each for the sum of two thousand dollars and bearing eight per cent. interest per annum from and after maturity until final payment. All of said notes for identification herewith have been by the undersigned recorder paraphed "*Ne varietur.*"

Now, in order the better to secure the payment of said sum of fifteen thousand dollars and of said notes at their respective maturity, as well as the interest to accrue on the same in case of nonpayment of the same at maturity, the property herein conveyed is, by consent of the purchaser, to remain specially mortgaged, affected, and hypothecated in favor of the vendors or the future holder or holders of the said notes herein described.

And the purchaser now declares that he expressly dispensed the undersigned recorder with the production of the certificate required by article 3328 of the Civil Code of this State, hereby exonerating

the undersigned from all liability that may result from the non-production of said certificate. Internal-revenue stamps of the United States for the sum of fifteen dollars ($15) are hereto affixed and canceled.

Thus done and passed in office at St. Martinsville, parish aforesaid, on the day, month, and year first above written, in presence of Alcibiade de Blanc and Alfred F. Peschier, competent witnesses, who hereunto sign their names with the parties and me, recorder, the whole after due reading.

("Original signed") BTE. CAVAILHEZ.
ERNESTINE DIAZ.
CLARK H. REMICK.
JOHN D. BROUSSARD, *Recorder.*

Witnesses:
ALCIBIADE DE BLANC.
ALFRED F. PESCHIER.

277 RECORDER'S OFFICE, PARISH OF ST. MARTIN.

I hereby certify the foregoing to be a true and correct copy of the original act on file and of record in this office.

Given under my hand and seal of office, at St. Martinsville, this 19th day of August, 1869.

[SEAL.] (Signed) ALF. F. PESCHIER,
D'y Recorder.

Recorded August 24th, 1869.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify the foregoing to be a true copy taken from Book "F" of Alienations and Notarial Acts, pages 378 & 379, number 2105 of the records of this office, together with the erasures or cancellations made across the same in said book by Leo Perret, former recorder, as they appear in said book; the erasures, &c., being copied across in red ink.

Given under my hand and seal this 29th Dec'r, 1894.

[SEAL.] LASTIE BROUSSARD,
Clerk of Court & Recorder.

Filed January 11th, 1886.

C. MAYO,
D'y Clerk U. S. Courts.

A true copy.

C. MAYO,
D'y Clerk U. S. Courts.

[SEAL.]

Filed Dec. 15, '93.

GEO. W. SUMMERS, *D'y Clerk.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

278 *Donation from J. B. Cavailhez to Marceline Cavailhez et al., Annexed to Bill in Chancery No. 28.*

ETAT DE LA LOUISIANE, }
Paroisse St. Martin. }

L'an mil huit cent soixante neuf, ce dixneuvieme jour du mois daut pardevant John D. Broussard, recorder *ex officio* notairielpublic dans et pour la paroisse St. Martin, soussigne et en presence des temoins ciapres nommes aussi soussignes ont personnellement comparu le sieur Baptiste Cavailhez et dame Ernestine Diaz, la dite dame dumant assistee et autorisee a leffet des presentes de la paroisse Vermilion, en cet Etat Lequels en consideration du marriage que leur fille Marceline Cavailhez, doit contracter incessamont lui ont par ces presentes fait donation, pure simple et irrevacable et sous meilleure forme que donation puisse ce faire D'un billet de la somme de Sept mille piastres Souscrit ce Jour par le Sieur C. H. Remick payable a demande au porteur avec huit pour cent d'enterets a partir du premier October prochain, 1869, le paiement duquel billet est quarantie par hypotheque sur une certain propriete transferro et vendue ce Jour, par les comparants au Sieur Remick par acte au Rapport du Recorder Soussigne auquel acte le present billet est identifie par la paraphe du Recorder Soussigne Son aussi transferés tous les droits hypothecaires et autres qui sont et peuvent etre attachés au billet plus decrit Cette donation est faite comme il est dit cidessus en consideration du marriage que la demoiselle donataire est sur le point de contracter et de plus parceque telle est la volante des sixeux et dame Donataires aux presentes est intervenne demoiselle Marceline Cavailhez enfant meuerer dument assiste par son pere qui declare accepter la suidite donation avec reconnaissance ont aussi comparie le Sieur C. H. Remick dune part et edmoiselle Marceline Cavailhez cette derniere assister et autorise por son per d'autre part Acete aussi qui suit
279 les condition civil du marriage quils se proposent de contracter incessament selon les loi de cette Etat. Art. 1st. Les future epoux adoptant le regime de la communite tel quil est etabli par le Code Civil de cette Etat. Art 2nd. Le future epoux paira de son chef les dettes dont seradelebiteur on Jour de la celebration du marriage. Art. 3rd. Les bien de la future époouse consistant en une Somme de Sept mille piastre representer par le billet decrit dons la donation qui precede le quelle acte en presence du Notaire et des temoins Loui qués remise par demoiselle Marceline Cavailhez au Seuer C. H. Remick, qui le reconnait auwuelle appoit le future epoux demeura charge vis a vis de la future epouse par le ouit fait du marriage et de la remise du dit billet sans quil soit besoin d'auceune aure quittance au decharge et si le marriage venant a marriage chose assez improbable le Sieur Remick devera rende a demoiselle Marceline Cavailhez sa future le billet diceit on lui en payer le montant cette remise, ou plutot ce transfert par la demoiselle comparante au Sieur Remick n'etant fait qu'on vertu du marriage projete entra eux Gous les droits hypothe-

caires attaches au sus dis billet ne s'etiendront que D'autant que le marriage, sera fait ou le montant du billet paye par le Sieur Remick a la demoiselle comparante Dont Acte: Fait et passe au Bureau a St. Martinsville paroisse Sus dite les Jour, mois at an que dessus en presence des Sieurs temoins competents qui ont signe avec les parties et moi Recorder apres lecture faite quarte mots rayes nuls. trois mots interlignes approuves avant que de signer.

(Original signed) MARCELINE CAVAILHEZ.
CLARK H. REMICK.
ERNESTINE DIAZ.
B'TE CAVAILHEZ.
ALCIBIADE DE BLANC.
ALF. F. PESCHIER.
JOHN D. BROUSSARD, *Recorder.*

STATE OF LOUISIANA, }
Parish of St. Martin. }

I, the undersigned deputy clerk, *ex officio* deputy recorder, 280 duly sworn and qualified in and for the parish and State aforesaid, do hereby certify the foregoing to be a true and correct copy from the original act of record and on file in this office, duly recorded therein on the 19th day of August, 1869, in vol. 33 of Conveyances, page 393, under No. 1358.

In testimony whereof I have hereunto signed my name and affixed the seal of office, at St. Martinsville, parish of St. Martin, this 5th day of February, 1884.

WM. B. EASTON,
[SEAL.] *Dy Clerk, ex Officio Dy Recorder.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
Dy Clerk of Court.

Answer of Marceline Cavailhez in Chancery Proceedings.

Circuit Court 7 U. S., West. Dist. La.

JEANNE CAROLINE CAVE, Widow, }
vs.
MARCELINE CAVAILHEZ, Widow. }

Respondent, Marceline Cavailhez, widow, &c., for answer denies all the allegations made by plaintiff in relation to the marriage of Baptiste Cavailhez and said plaintiff and in relation to the sums of money which plaintiff alleges are due to her by the estate of said B. Cavailhez, as respondent knows not that said allegations are true and has no means of information.

Respondent further denies that the plaintiff had on or before or after the 19th day of August, 1869, any rights either of ownership or as creditor to and upon the property described in her petition.

281 Respondent further denies that there ever was any combination or conspiracy or confederation between either respondent or her deceased husband and Baptiste Cavailhez and Ernestine Diaz for the purpose of defending plaintiff or for the purpose of defeating said plaintiff's rights to any property.

Respondent further denies that there was ever any combination or any confederation between Ernestine Diaz and Baptiste Cavailhez for the purpose of defrauding plaintiff.

Respondent further avers that by the marriage between Baptiste Cavailhez and Ernestine Diaz each was invested with the rights and charges, with the obligations, which the laws create.

Respondent further avers that even if it be true that Baptiste Cavailhez and the plaintiff had been married, the marriage between Baptiste Cavailhez and Ernestine Diaz was legal and had its legal effects as far as Ernestine Diaz and your respondents are to be effected.

Respondent further avers that she was the only child of the marriage between Cavailhez and Diaz and the only child and heir of the former.

Respondent further avers that the sale made on the 19th day of August, 1869, by Cavailhez and Diaz to Clark H. Remick was real and *bona fide*.

And she further avers that the donation made on the same day by said Cavailhez and Diaz to respondent was real and *bona fide*.

Respondent further avers that the said sale and the said donation are recorded in the office of alienations of parish of Vermilion on or about the 24th August, 1869.

Respondent further avers that immediately after the passing of said sale Clark H. Remick, her husband, took active possession of the properties so sold to him and was the *bona fide* possessor
282 thereof (except what he sold) to time of his death; that at his succession sale respondent bought said property.

That during the life and the possession of the said Clark H. Remick of the plantation he placed valuable and necessary improvements, to wit, buildings, machinery, fencing, canals, &c., on said property, and so has your respondent since she has had title and possession of the same.

The said improvements have increased and enhanced the value of said plantation to the amount of ten thousand dollars.

That respondent, in case of eviction from said plantation, being a possession in good faith, is entitled to recover the cost, which is fifteen thousand dollars, of said improvements, or at least the amount of ten thousand dollars, which is the enhanced value of the said plantation given to it by said improvements.

Respondent further avers that in case of eviction from said property she is entitled to recover from plaintiff the sum of eight thousand dollars which the said Clark H. Remick paid of the price of fifteen thousand stipulated by the act of sale of 19th August, 1869, from Cavailhez & Diaz to said Remick.

Respondent further avers that she and her husband before her being possessors in good faith and with title translative of property

for more than ten years before the service of citation to this suit, the action of plaintiff is prescribed by the lapse of ten years, which she here specially pleads.

Wherefore respondent prays that the suit of plaintiff be dismissed, and in case of judgment in favor of plaintiff against respondent for the property, then that there be judgment in favor of respond-
283 ent against plaintiff in the sum of eight thousand dollars, and in the further sum of fifteen thousand dollars, and that there be judgment decreeing that respondent remain in possession of said property until payment to her by plaintiff of the above sums; and respondent prays for any other decree required and necessary, and for general relief.

MARCELINE C. REMICK.

I swear that the allegations made in the foregoing answer are true and correct.

MARCELINE C. REMICK.

Sworn to & subscribed this 18th Oct., 1884, by me, clerk of court of Vermilion parish.

LASTIE BROUSSARD,
Clerk District Court.

Filed Oct. 27, '84.

W. F. ANDERSON, *D'y Clerk.*

Filed Dec. 15, 1893.

GEO. W. SUMMERS, *D'y Clerk.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

32.

Judgment of U. S. Circuit Court in Chancery Proceedings.

5th Circuit, U. S. Court, West. Dist. La. In Chancery.

JEANNE CAROLINE CAVE, Widow,
vs.
MARCELINE CAVAILHEZ, Widow, &c.

This case came up for trial and the parties adduced their
284 evidence.

The said evidence and the law being in favor of oratrix, Jeanne Caroline Cave, widow of Baptiste Cavailhez, deceased, as to her claims as surviving widow and creditor of his succession—

It is ordered, adjudged, and decreed:

1st. That the sale made on the 19th August, 1869, by Baptiste Cavailhez and Ernestine Diaz to Clark H. Remick of the following-described property be annulled and avoided, the said property in said act of sale being described as follows:

First. A town lot in Abbeville, parish of Vermilion, being number 33 of the plat of said town, with buildings and improvements, said lot bounded west by Jefferson street, north by Concordia street, south by lot number 34, and east by lot number 41.

Secondly. A certain plantation situated on the east side of the Bayou Vermilion, in the aforesaid parish (Vermilion), with a front of ten arpents on said bayou by forty in depth, with buildings and improvements, bounded west by Bayou Vermilion, east by public lands, south by the property of Numa St. Julien, and north by property of Euclide Roy, together with said plantation, mules, horses, milch cows, carts, wagons, tools of husbandry, and other plantation paraphernalia.

2nd. It is ordered and decreed that the said oratrix and plaintiff in bill, Jeanne Caroline Cave, widow, be, and *he* is hereby, recognized as the lawful widow of Baptiste Cavailhez, and as such that she be, and is hereby, entitled to and decreed to be the owner of the undivided half of all the property above described.

285 3rd. It is further ordered that the act of donation or dowry from Baptiste Cavailhez and Ernestine Diaz to Marceline Cavailhez, made on the 19th day of August, 1869, be, and is hereby, decreed to be null and void and of no effect, and that Ernestine Diaz, the mother of the defendant, Marceline Cavailhez, never was the lawful wife of Baptiste Cavailhez.

4th. It is further ordered and decreed that the said oratrix and plaintiff in bill have judgment against the estate of Baptiste Cavailhez in the sum of five thousand three hundred and ten dollars, with legal interest from the 25th day of February, 1884.

That her mortgage to secure the aforesaid sum and interest upon the property of Baptiste Cavailhez, to take effect from the 13th day of April, 1863, be recognized and enforced.

And because the law and the evidence is in favor of the defendant, Marceline Cavailhez, widow of Clark H. Remick, and against the oratrix and plaintiff in bill, as to the reconventional demand for improvements she placed on the plantation—

It is further decreed that the defendant, Marceline Cavailhez, widow of C. H. Remick, have judgment against the oratrix for the sum of fifteen hundred dollars, and, to insure the payment thereof, it is further decreed that she, the said defendant, have a mortgage and privilege on the property above described.

ALECK BOARMAN, *Judge.*

A true copy.
C. MAYO,
[SEAL.] *D'y Clerk U. S. Courts.*

Filed Dec. 15th, '93.
GEO. W. SUMMERS,
D'y Clerk of Court.

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

286 *Extract Minutes of Court, Annexed to Document Marked* 32.

MONDAY, *January 11th*, 1886.

Court met pursuant to adjournment.

Present: His hon. Aleck Boarman, M. S. Jones, U. S. att'y; A. C. Gibson, U. S. marshal; J. W. Wheaton, clerk, and C. Mayo, d'y clerk.

CAROLINE CAVE, Widow,
vs.
MARCELINE CAVAILHEZ, Widow.

Plea by defendant of peremptory exception, and no cause of action filed, and plea of replication filed by plaintiff.

Judgment. See decree.

I hereby certify that the above is a correct extract of the minutes of this court.

C. MAYO, *D'y Clerk.*

Opelousas, June 11th, 1886.

[SEAL.]

Filed December 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

34.

Certificate of Hon. Aleck Boarman, Judge, Annexed to Document Marked 32.

I, Aleck Boarman, United States judge for the western district of Louisiana, do certify that C. Mayo, whose name is signed to the above certificate as deputy clerk of the United States courts
287 for the western district of Louisiana, was at the time of signing said certificate and is now the deputy of J. W. Wheaton, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such deputy clerk.

Given under my hand.

June 30th, A. D. 1886.

ALECK BOARMAN, *Judge.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

35.

Inventory Taken in Suc. No. 17091, *Jeanne C. Cave.*

STATE OF LOUISIANA, }
Parish of Vermilion. }

Succession of JEANNE CAROLINE CAVE. No. 17091.

Be it known that on this the 23rd day of December, A. D. one thousand eight hundred and ninety-two, by virtue of a commission issued from the civil district court for the parish of Orleans, division "E," in the parish matter of the succession of Jeanne C. Cave, widow of Baptiste Cavailhez, being No. 17091, and to me directed, authorizing and empowering me to take and make an inventory and appraisement of all the property, movable as well as immovable, belonging to said succession, situated in the parish of Vermilion, I, Lastie Broussard, a notary public, duly commissioned and qualified, in and for the said parish of Vermilion, have appointed Messrs.
Elie Montagne, Jr., and Numa Frederick, of said parish, ex-
288 perts to appraise said property and to assist me in taking said inventory, and, after having sworn them as the law requires, proceeded to execute said commission, and, under the direction of F. Chapuis, Esqr., of said parish, the following-described property was inventoried as belonging to the community between J. Baptiste Cavailhez, deceased, and the deceased Jeanne Caroline Cave, widow of said Cavailhez, to wit:

1st. A certain plantation situated on the east side of the Bayou Vermilion, measuring ten arpents front on said river, then forty arpents deep, with all the buildings and improvements thereon, including two cotton gins, a grist mill, steam-engine, flat-boat, three gentle horses, two mules, and fencing, buildings, carts, &c., appraised at seven thousand eight hundred and twenty-five dollars ($7,825).

2nd. A town lot designated as number 33 of the plan of A. D. Megret's portion of the town of Abbeville, with buildings and improvements situated thereon, bounded north by Concordia street, south by lot No. 34, east by lot No. 41, and west by Jefferson street, appraised at the sum of one thousand eight hundred dollars ($1,800).

And the following was appraised as the separate property of said J. C. Cave, viz:

3rd. A judgment in favor of said widow, Jeanne Caroline Cave, against the succession of her deceased husband for the sum of five thousand three hundred and ten dollars, with legal interest from the 25th of February, 1884, bearing mortgage on the aforesaid property as decreed by judgment of the United States court at Opelousas, in the matter of the suit entitled Jeanne Caroline Cave,
widow Cavailhez, *vs.* Marceline Cavailhez, widow, *et als.*, ap-
289 praised at seven thousand six hundred and thirty-four $\frac{00}{100}$ dollars.

There being no other — shown or designated to the ap

praisers and notary for appraisement, the present inventory was closed, amounting to seventeen thousand two hundred and fifty-nine and $\frac{30}{100}$ dollars ($17,259.30).

1. Amount of communitive property	$9,625.00
2. Amount of judgment of widow against J. B. Cavailhez	7,634.30
Total	$17,259.30

Thus done and signed in presence of Messrs. Oscar Hebert and Felix O'Neil, competent witnesses, of said parish, after due reading of the whole.

(Signed) E. MONTAGNE, JR.
NUMA FREDERICK.

Witnesses:
OSCAR HEBERT.
FELIX O'NEIL.

(Signed) FS. CHAPUIS,
Executeur Testamentaire.

" LASTIE BROUSSARD,
Notary Public.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify that the foregoing are true and correct copies of the original commission, oath of appraisers, and inventory taken thereunder before Lastie Broussard, notary public, on file in my office and of record in vol. 10 of Conveyances, page 407 *et seq.*, No. 5462, on the 23rd day of December, 1892.

(Signed) ALCIDE LE BLANC,
Clerk & ex Officio Recorder.

290 A true copy.

GEO. W. PRADOS,
[SEAL.] *D'y Clerk Civil District Court, Parish of Orleans.*

Filed December 15th, 1893.

GEO. W. SUMMERS, *D'y Clerk.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

36.

Testament of Jeanne Caroline Cave, Annexed to the Inventory under Number 31.

Ceci est mon testament.

Je nomme et institute, comme mon legataire et universer et mon heritier, Monsieur Francois Chapuis, d'Espalingues, Canton de Vaud Suisse, resident Actuellement a la Noûvelle Orleans, rue de Chartres, No. 145.

Je laisse a Mme. Veuve Voisin, epouse de Mr. Francois Chapuis, deux mille piastres—a Mr. Constantin Angelman, Cinquante piastres a Mme. Aimee, Cinquante piastres—a Mr. Lescairet alee de Orleans, No. 33, Bordeaux Gironde, mille piastres.

Je nomme et institute Mr. Francois Chapuis, mon executeur testamentaire, avec saisine de mes biens, le dispensant de fournir caution.

Fait a la Nouvelle Orleans, ce dix-neuf Janvier, Mil huit cent quarte-vingt cinq.

(Signe) CAROLINE CAVAILHEZ BAPTISTE,
[SEAL.] VEUVE, NÉE CAVE.

[Written across the face in red ink:] "*Ne varietur.*" New Orleans, March 10th, 1886. (Signed) Henry L. Lazarus, judge.

[Written across the face in red ink:] "*Ne varietur.*" New Orleans, March 10th, 1886. (Signed) Henry L. Lazarus, judge.

291 A true copy.

EUG. D'HERETE, *Clerk.*

Filed Dec. 15th, 1893.

GEO. W. SUMMERS, *D'y Clerk.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

37.

Decree of U. S. Circuit Court, Marked "L."

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, November Term, A. D. 1885.

NEW ORLEANS, FRIDAY, *the 2nd Day of April*, 1886.

Court met pursuant to adjournment.

Present: The Honorable Edward C. Billings, district judge.

LAURENT LACASSAGNE
vs.
JEANNE CAROLINE CAVE CAVAILHEZ. } No. 11254.

This cause came on to be heard on the complainant's application for an injunction *pendente lite* and was argued by counsel. On consideration whereof it is ordered that said application be denied.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 9th day of April, 1886.

292 [SEAL.] E. R. HUNT, *Clerk,*
By H. J. CARTER, *D'y Clerk.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

Restraining Order.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

LAURENT LACASSAGNE
vs.
JEANNE CAROLINE CAVE CAVAILHEZ. } No. 11254.

The President of the United States to Jeanne Caroline Cave Cavailhez, Greeting:

Whereas it has been represented unto us in our said circuit court on the part of Laurent Lacassagne, in bill in equity lately exhibited against you, touching certain matters and things therein set forth; and whereas the Honorable Edward C. Billings, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause whereby you are required to show cause, on Saturday, the 6th day of March, 1886, why an injunction should not issue as prayed for in said bill of complaint; and whereas the said judge has granted and allowed an order restraining you immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint:

293 Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Jeanne Caroline Cave Cavailhez, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined under the penalty of the law that you and each of you absolutely refrain and desist from interfering with said Laurent Lacassagne as owner of all and singular the following-described property, viz: A certain plantation situated in the parish of Vermilion, State of Louisiana, lying and being on the east side of the Bayou Vermilion, having a front of ten arpents on said bayou by forty arpents in depth, with the buildings and improvements thereon, bounded on the west by the Bayou Vermilion, on the east by public lands, on the south by Emile Romero, and north by property of Miller, Lyon & Co., together with the mules, horses, carts, cows, wagons, tools of husbandry, and other plantation equipment thereon, or from interfering with or disturbing him in possession thereof.

And that you, the said Jeanne Caroline Cave Cavailhez, your agents, attorneys, and servants, and each of you, remain so inhibited and restrained until the further order of our said court in the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 23rd day of February, in the year of our Lord one thousand eight hundred and eighty-six.

E. R. HUNT, *Clerk*,
By H. J. CARTER,
Deputy Clerk.

[SEAL.]

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

294 39.

Petition of H. Abraham & Son in Suit No. 540.

To the honorable the judge of the 17th judicial district court of the State of Louisiana, for the parish of Vermilion:

The petition of H. Abraham & Son, a commercial firm, composed of Henry Abraham and Jake H. Abraham, domiciled and doing business in the city of New Orleans, this State, with respect represents—

That your petitioners are the holders and owners of three certain promissory notes made and subscribed by Francois Chapuis, a resident of the parish of Vermilion, as follows, to wit:

First. One certain promissory note, dated New Orleans, August 1st, 1888, for the sum of six hundred and eighty-seven $\frac{20}{100}$ dollars, payable one year after date to the order of F. Chapuis and by him endorsed, bearing eight per cent. per annum interest from its date until paid; all of which will more fully appear by reference to said note, hereto annexed and made part hereof and marked Exhibit "A." That in order to secure the payment of said note, principal, interest, and five per cent. on amount sued for as attorneys' fees, the said Francois Chapuis entered into, before Richard C. Stockton, a notary public for the city of New Orleans, on the first day of August, 1888, and signed and delivered unto Henry Deriaz a special mortgage in favor of said Henry Deriaz, or any future holder or holders of said note, on the following described property, to wit:

1st. A certain plantation situated on the east side of the Bayou Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said Bayou Vermilion by forty arpents in
295 depth, together with the buildings and improvements thereon, bounded west by Bayou Vermilion, east by public lands, south by the property of Numa St. Julien, and north by the property of Euclide Roy, together with all the stock now thereon, including mules, horses, milch cows, carts, wagons, tools, &c.

2nd. A town lot in the town of Abbeville, in the parish of Vermilion, in this State, being lot number 33 of the plat of said town, with buildings, &c., bounded west by Jefferson street, north by Concordia, south by lot No. 34, and east by lot No. 31; and as a further guarantee for the payment of said note, said Francois Chapuis further pledged in favor of said Henry Deriaz a certain judgment rendered by the circuit court of the U. S., 5th circuit and western district of Louisiana, in the matter of Jeanne Caroline Cave, widow, vs. Marceline Cavailhez, widow, *et als.*, No. 33 of the docket, for $5,310.00, with legal interest from February 25th, 1884; and the said Francois Chapuis did further confess judgment in said notarial act for the amount of said note, with interest, as aforesaid, and all costs and charges, expenses, and attorneys' fees, as aforesaid, with waiver of appraisement of said property, as will appear more fully by reference to a certified copy of said notarial act, hereto annexed and made part thereof and marked "Exhibit B," and which said act of mortgage was duly recorded in Vermilion parish, in vol. 2 of

Mortgages, No. 587, at page 276, October 18th, 1888, as appears by the certificate thereto annexed and marked "Exhibit C." Your petitioners further represent that they acquired said notes for full value on March 11th, 1891, by notarial transfer, before Joseph Duvigneaud, notary public for the city of New Orleans, as will more fully appear by reference to said notarial act, hereto annexed and made part hereof and marked "Exhibit D."

Second. Another promissory note, dated New Orleans, April 7th, 1890, for the sum of thirteen hundred and three and $\frac{70}{100}$ dol-
296 lars, payable one year after its date, to the order of F. Chapuis, and by him endorsed, bearing eight per cent. per annum interest from March 10th, 1890, until paid, all of which will more fully appear by reference to said note, hereto annexed and made part thereof and marked "Exhibit E."

That in order to secure the payment of said note, principal and interest and five per cent. attorneys' fees, said F. Chapuis entered into, before Martin Voorhies, a notary public for the city of New Orleans, on the seventh day of April, 1890, and signed and delivered unto your petitioners a special mortgage in favor of your petitioners or any further holder or holders of said note on the following described property, to wit, in the parish of Vermilion, viz: All the right, title, interest, claim, and demand of the said Francois Chapuis in a certain plantation situated on the east side of the Bayou Vermilion, in the aforesaid parish of Vermilion, having a front of ten arpents on said Bayou Vermilion by a depth of forty arpents, together with the buildings and improvements thereon, bounded west by the Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, which said rights, title, interest, claims, and demand of the said Francois Chapuis *was* acquired by him as universal legatee of Jeanne Caroline Cave, widow of Baptiste Cavailhez, duly recognized as such and in possession of all her property and effects, as the whole will fully appear by reference to the notarial proceedings had in the matter of her succession, No. 17091 of the docket of the civil district court for the parish of Orleans, and the interest of the said Mistress Widow Jeanne Caroline Cave was acquired as follows, to wit: By a judgment rendered on the 11th day of January, 1886, by the Honorable Aleck Boarman, judge of the fifth circuit, United States circuit court, western district of Louisiana, in the matter of the suit of Jeanne Caroline Cave, widow, *vs.* Marceline Cavailhez, widow, *et als.*,
No. 33 of the docket of the said court, she was decreed to be
297 the owner as the surviving widow in community of the real estate above described—that is to say, of the undivided half thereof—and it was further decreed that she have judgment against the estate of Baptiste Cavailhez in the sum of five thousand three hundred dollars, with legal interest from February 25th, 1884, and that her mortgage to secure the aforesaid sum and interest upon the property of Baptiste Cavailhez take effect from April 13th, 1863, be recognized and enforced, all of which will more fully appear by reference to a certified copy of said act of mortgage, hereto annexed

and made part hereof, marked "Exhibit F," and which said act of mortgage was duly recorded in the parish of Vermilion, in vol. 3 of Mortgages, No. 1335, page 174, on April 15th, 1890, as appears by the certificate hereto appended and marked "Exhibit G."

Thirdly. Another promissory note, made and subscribed by F. Chapuis, dated New Orleans, May 14th, 1891, for the sum of fourteen hundred and one $\frac{12}{100}$ dollars, payable on February 15th, 1892, to the order of F. Chapuis, and by him endorsed, bearing eight per cent. per annum interest from May 14th, 1891, until paid, all of which will more fully appear by reference to said note, annexed hereto and made part hereof and marked "Exhibit H." That in order to secure the payment of said note, in principal and interest and five per cent. attorneys' fees, the said Francois Chapuis entered into, before Martin Voorhies, a notary public for the city of New Orleans, on May 14th, 1891, and signed and delivered unto your petitioners a special act of mortgage in favor of your petitioners or any future holder or holders of said note on the following-described property situated in the parish of Vermilion, viz: One certain plantation situated on the east side of the Bayou Vermilion, in the parish of Vermilion and this State, having a front of ten arpents on said bayou by a depth of forty arpents, bounded west by said Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together
298 with all the buildings and improvements thereon, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining, being the same property which the said Chapuis — as follows: By judgment of the U. S. circuit court for the 5th circuit, western district of Louisiana, dated January 11th, 1886, in the suit entitled Jeanne Caroline Cave, widow, *vs.* Marceline Cavailhez, widow, *et als.*, No. 33 of the docket of said court, Mrs. Caroline Cave, widow, was decreed to be the owner of the one undivided half of the above-described property and to judgment against the other undivided half in the sum of five thousand three hundred dollars, with legal interest from April 13th, 1863.

And in the matter of the succession of the said Jeanne Caroline Cave, widow of J. B. Cavailhez, No. 17091 of the docket of the civil district court for the parish of Orleans, Francois Chapuis was recognized as her sole heir and universal legatee, and as such put in possession, and subsequently, on the 3rd day of June, the said Francois Chapuis acquires, at sheriff's sale, the undivided half of said property sold under order of court, all of which will more fully appear by a certified copy of said act of mortgage, hereto annexed and made a part hereof and marked "Exhibit I," and also certified copy of sheriff's sale, hereto annexed and made part hereof and marked "Exhibit J." Your petitioners further represent that in said act of special mortgage marked "Exhibit K" the said Francois Chapuis acknowledged, affirmed, and maintained the validity and legality of the two acts of mortgage aforecited and marked "Exhibit B" and "Exhibit F," respectively, one passed before

Martin Voorhies, notary public, on April 7th, 1890, the other passed before R. C. Stockton, notary public, on August 1st, 1888, as also the validity and legality of the aforesaid cited act of subro-
299 gation passed before Joseph Duvigneaud, notary public, on March 11th, 1891.

Your petitioners further represent that the said Francois Chapuis is justly and legally indebted unto them in the full sum of thirty-five hundred and seventy-two and $\frac{12}{100}$ dollars, with eight per cent. per annum interest on $687.20 thereof from August 1st, 1888, till paid, and the further sum of five per cent. additional on the aggregate for attorneys' fees, and a like interest on $1,303.70 thereof from March 10th, 1890, with five per cent. additional on the aggregate for attorneys' fees, and a like interest on the balance, to wit, $1,401.12, from May 14th, 1891, till paid, with five per cent. additional for attorneys' fees; that the special mortgage given, as hereinbefore cited, to secure said note and principal and interest, charges, expenses, and attorneys' fees should be recognized to take effect from their respective dates on the property therein respectively described.

Your petitioners aver amicable demand to no avail.

Premises considered, your petitioners respectfully pray that Francois Chapuis may be duly cited as the law directs, and that your petitioners have judgment against and recover of the said Francois Chapuis the full sum of thirty-five hundred and seventy-two and $\frac{20}{100}$ dollars, with eight per cent. per annum interest on six hundred and eighty seven and $\frac{20}{100}$ dollars from August 1st, 1888, till paid, with five per cent. additional on the aggregate for attorneys' fees, and a like interest, to wit, eight per cent. on thirteen hundred and three and $\frac{20}{100}$ dollars from March 10th, 1890, with five per cent. additional on the aggregate for attorneys' fees, and a like interest, to wit, eight per cent. on the sum of fourteen hundred and one and $\frac{12}{100}$ dollars, with five per cent. additional on the aggregate for attorneys' fees. Your petitioners further pray that the special mort-
300 gages given to secure said notes be recognized to bear on the property therein described, to take effect from their respective dates. They further pray, after the expiration of all delays and in satisfaction of the judgment herein prayed for, that said special mortgages and judgment thereon be enforced against the following-described property, and that the same be seized in satisfaction thereof, to wit:

One certain plantation situated on the east side of the *east side of* Bayou Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said bayou by a depth of forty arpents, bounded west by said Bayou Vermilion, east by the public lands, south by property of Numa St. Julien, north by property of Euclide Roy, together with all the buildings and improvements thereon, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or anywise appertaining, and all work-stock, agricultural implements, and such other appurtenances thereto attached.

Your petitioners further pray for all costs and for general relief, and as in duty bound, &c., &c.

W. A. WHITE,
C. DE BAILLON, *Of Counsel.*

Filed Feb'y 11th, 1893.
ALCIDE LE BLANC,
Clerk of Court.

Filed December 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

40.

EXHIBIT "A."

Note Annexed to Petition No. 39, *Secured by Act No.* 41.

EXHIBIT "B."

301 $687.20. NEW ORLEANS, *August 1st*, 1888.

One year after date I promise to pay to the order of myself, at —, six hundred and eighty-seven $\frac{20}{100}$ dollars, for value received, with interest, at the rate of 8 % per annum, after date until paid. Due ——.

F. CHAPUIS.

No. —.

[Written across the face in red ink:] *Ne varietur.* Secured by mortgage by act passed this day of August 1st, 1888. R. C. Stockton, N. P.

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

41.

Act of Mortgage Annexed to Petition No. 39, "*Exhibit B.*".

EXHIBIT B.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans.

Mortgage by —— —— in favor of —— ——. No. 32.

1ST AUGUST, 1888.

Be it known that on this first day of the month of August, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and —, before me, Richard C. Stockton, a notary public, duly commissioned and sworn, in and for this city and the parish of Orleans, therein residing, and in the presence of the witnesses here-

inafter named and undersigned, personally appeared Mr. Francois Chapuis, residing in the parish of Vermilion, in this State,
302 who declared that he is justly and truly indebted unto Mr. Henry Deriaz, residing in this city, in the full sum of six hundred and eighty-seven and 20/100 dollars, money this day loaned and advanced to him in legal currency of the United States of America by said Deriaz, and in order to secure the faithful return and reimbursement of said sum within a definite period the said debtor has made, executed, and issued his certain promissory note for the said sum of six hundred and eighty-seven 20/100 dollars, dated this day, drawn by him to his own order and by him endorsed and made payable in one year after date, with interest from date, at the rate of eight per cent. per annum, until paid, which said note, after having been paraphed "*Ne varietur*" by me, notary to be herewith identified, was delivered to the said Henry Deriaz, and he acknowledg- —.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of said note, or any part thereof, the said Francois Chapuis binds himself to pay the fees of the attorney-at-law who may be employed for that purpose; which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said note at maturity, together with all the interest and attorneys' fees, the said Chapuis declared that he does by these presents mortgage, affect, and specially hypothecate in favor of the said Henry Deriaz, and to insure to the use and benefit of any and all future holder or holders of said note, the said Deriaz being here present and accepting, the following-described property, to wit:

1st. A plantation situated on the east side of the Bayou Vermilion, in the parish of Vermilion, in this State, having a front on the said bayou of ten arpents by forty arpents in depth, to-
303 gether with all the buildings and improvements thereon, bounded west by Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with all the stock now thereon, including mules, horses, milch cows, carts, wagons, tools, &c.; which property was acquired by the present vendor by purchase from Ernest F. Wesche by act passed before me on the first day of August, 1888.

2nd. A town lot in the town of Abbeville, in the parish of Vermilion, in this State, being number 33 of the plat of said town, with buildings, &c., bounded on the west by Jefferson street, north by Concordia street, south by lot number 34, east by lot number 31; and as a further guarantee for the payment of said note said Francois Chapuis further pledges, in favor of said Henry Deriaz, a certain judgment rendered by the circuit court of the U. S., 5th circuit and western district of La., in the matter of Jeanne Caroline Cave, widow, *vs.* Marceline Cavailhez, widow, & *als.*, No. 33 of the docket, for $5,310.00, with legal interest from Feb'y 25th, 1884.

The said premises, it is well understood, shall remain thus mortgaged and hypothecated until the full and final payment of the aforesaid promissory note and of any and of all renewals or exten-

sions of payment thereof; and the said Chapuis hereby binds himself and his heirs not to sell, alienate, mortgage, nor in anywise incumber the said premises to the prejudice of these presents.

The said Chapuis further declared that he does by these presents consent, agree, and stipulate that in the event of the said promissory note not being punctually paid at maturity it shall be lawful for, and he hereby authorizes, the said mortgagee or any holder or holders of said note to — all and singular the property hereinbefore described and herein mortgaged to be seized and sold under executory process, issued by any competent court, without ap-
304 praisement, to the highest bidder, payable cash, the said mortgagor hereby expressly dispensing with all and every appraisement of said property, and by these presents waiving and renouncing the benefit of appraisement and of all laws or parts of laws relative to the appraisement of movable or immovable effects or properties seized and sold under executory or other legal proceedings; and the said Chapuis does hereby confess judgment in favor of the said mortgagee and all person or persons as may be the holder or holders of the said note for the full amount thereof, together with all interest and costs.

According to the certificate of the clerk of court and *ex officio* recorder of the parish of Vermilion, annexed to an act of sale passed before me this day, being the sale by Francois Chapuis to Ernest F. Wesche, it appears that the property hereby mortgaged is clear of encumbrances other than those herein stated, and the mortgage herein consented is accepted subject to the mortgages enumerated and set forth in said certificate.

Thus done and passed in my office at New Orleans on the day, month, and year aforesaid, in presence of Messrs. Louis N. Penet and Anatole A. Ker, competent witnesses hereto required, who have signed these presents with the parties hereto and me, notary, after due reading of the whole.

(Original signed)

F. CHAPUIS.
H. DERIAZ.
ANAT. A. KER.
LOUIS N. PENET.
R. C. STOCKTON, *N. P.*

305 EXHIBIT "C."

STATE OF LOUISIANA, }
Parish of Vermilion. }

Duly recorded in vol. 2 of Mortgages, No. 857, page 276 *et seq.* October 18th, 1888.

[SEAL.]

GEO. W. SUMMERS,
D'y Clerk and Recorder.

STATE OF LOUISIANA, }
City of New Orleans. }

I, Martin Voorhies, custodian of notarial records in and for this city and the parish of Orleans, duly commissioned and qualified, do

hereby certify the above and foregoing to be a true copy of the original act extant and of record in the archives of R. C. Stockton, late a notary in this city, whose notarial records now belong to and are on file and of record in the archives of my office.

In faith whereof I hereunto set my hand and affix my seal of office this 18th day of February, 1891.

[SEAL.] M. VOORHIES,
Custodian Notarial Records.

Filed Feb'y 11th, 1893.

ALCIDE LE BLANC,
Clerk of Court.

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

306 42.

Notarial Transfer of Note Annexed to Petition 39, *Exhibit "D."*

EXHIBIT A.

STATE OF LOUISIANA,
City of New Orleans.

Be it known that on the 11th day of March, in the year of our Lord one thousand eight hundred and ninety-one, before me, Joseph Duvigneaud, a notary public in and for the city of New Orleans, parish of Orleans, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Anatole A. Ker, Esq., att'y-at-law, residing in this city, herein appearing and acting in his capacity of last holder and bearer of a certain promissory note for the sum of six hundred and eighty-seven and $\frac{20}{100}$ dollars, dated New Orleans, August 1st, 1888, drawn and subscribed by F. Chapuis, to his own order, and by him endorsed and made payable in one year after date, with interest, at the rate of eight per cent. per annum, from date until paid; which said note is the identical one which is secured by mortgage and special hypothecation upon the following-described property, to wit:

1st. A certain plantation situated on the east side of the Bayou Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said Bayou Vermilion by forty arpents in depth, together with buildings, &c., bounded west by Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with all the stock, &c., &c.

2nd. A town lot in the town of Abbeville, in said parish, being lot number 33 of the plat of said town, with buildings, &c., bounded west by Jefferson street, north by Concordia street, south by lot 34, east by lot 31.

307 And also further secured by pledge upon a certain judgment rendered by the circuit court of the United States, sixth circuit and western district of Louisiana, in the matter of Jeanne

Caroline Cave, widow, &c., &c., *vs.* Marceline Cavailhez, widow, &c., *et als.*, No. 33 of the docket, for $5,310.00, with legal interest from Feb'y 25th, 1884, by act passed before R. C. Stockton, late notary, in this city, on August 1st, 1888.

And the said appearer said that having received from Messieurs Henry Abraham & Sons, a commercial firm domiciled and doing business in this city, a sum of eight hundred and seventy-six and $\frac{13}{100}$ dollars ($876.13), amount in capital and interest of said note, together with attorneys' fees and costs of copy of said act of mortgage, he does hereby transfer the said note unto the said Abraham & Son, hereby subrogating them to the rights and actions which he has or may have against the bearer thereof, the said Francois Chapuis.

Thus done and passed in presence of Messieurs Wm. H. Briede and A. R. Uccello, competent witnesses, of lawful age, who signed their names hereto with said appearer and me, notary, after due reading thereof.

The original is signed— ANAT. A. KER,
W. H. BRIEDE,
A. R. UCCELLO, AND
J. DUVIGNEAUD, *Not. Pub.*

A true copy.
JOS. DUVIGNEAUD,
Notary Public.

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

43.

Note Annexed to Petition No. 39, *Secured by Act No.* 44.

EXHIBIT "E."

308 $1,303.70. NEW ORLEANS, *April 7th*, 1890.

One year after date I promise to pay to the order of myself thirteen hundred and three & $\frac{70}{100}$ dollars at the counting-rooms of Messrs. H. Abraham & Son, in this city, for value received, with interest, at the rate of 8 % per annum, from March 10th, 1890, until paid.

Per Pro F. CHAPUIS,
A. M. MIRE.

No. 338. Due April 10, '91.

[Written across the face in red ink:] *Ne varietur.* For identification with an act of mortgage passed this day before me. M. Voorhies, not. pub.

Filed Feb'y 11, '93.
ALCIDE LE BLANC,
Clerk of Court.

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

26—301

44.

Act Annexed to Petition No. 39, Exhibit F.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans.

Mortgage, F. Chapuis, favor of H. Abraham & Son.

APRIL 7TH, 1890.

Be it known that on this seventh day of April, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and
309 fourteenth, before me, M. Voorhies, a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Alexandre M. Mir, of the city of New Orleans, herein acting in his capacity of agent and attorney-in-fact of Mr. Francois Chapuis, of the parish of Vermilion, in this State, by virtue of two acts of procuration under private signature, the one dated the fifth day of October last, 1889, duly acknowledged before Alcide Le Blanc, clerk of the district court in and for said parish of Vermilion, and the other dated the thirty-first day of March last, 1890, both of which acts of procuration are hereto annexed for reference.

And the said appearer, acting as aforesaid, declared and acknowledged that the said Francois Chapuis is justly and truly indebted unto the commercial firm of H. Abraham & Son, of this city, in the full sum of thirteen hundred and three $\frac{70}{100}$ dollars, balance due in account current for advances furnished to him by said firm up to the tenth day of March last, 1890, as per statement hereto annexed and made part thereof, and, for settlement and reimbursement of said sum, the said A. M. Mir, acting as aforesaid, has made and subscribed one certain promissory note for the sum of thirteen hundred and three $\frac{70}{100}$ dollars, dated this day, payable at the counting-room of Messrs. Abraham & Son, in this city, one year after date, to his own order, and stipulating to bear interest at the rate of eight per cent. per annum from the tenth day of March last, 1890, until paid, which said note, after having been paraphed "*Ne varietur*" by me, notary, for identification herewith, was delivered unto Mr. Jacob H. Abraham, member of said firm of H. Abraham & Son, herein representing said firm, here present, hereby acknowledging the receipt thereof.

310 Now, in order to secure the full and punctual payment of the above-described note in capital and interest, together with all attorneys' fees, as hereinafter specified, the said A. M. Mir, acting as aforesaid, does by these presents mortgage, affect, and specially hypothecate in favor of said H. Abraham & Son, and to enure to the use and benefit of any and all holder or holders of the said note, the following-described property, to wit:

All the right, title, interest, claim, and demand of the said Francois Chapuis in a certain plantation situated on the east side of the Bayou Vermilion, in the aforesaid parish of Vermilion, having a front of ten arpents on said Bayou Vermilion by a depth of forty arpents, together with all the improvements thereon, bounded west by the Bayou Vermilion, east by public lands, south by the property of Numa St. Julien, and north by property of Euclide Roy.

Which said right, title, interest, claim, and demand of the said Francois Chapuis was acquired by him as universal legatee of Jeanne Caroline Cave, widow of Baptiste Cavailhez, duly recognized as such and sent in possession of all her property and effects, as the whole will fully appear by reference to the mortuary proceedings had in the matter of her succession, No. 17091 of the docket of the civil district court for the parish of Orleans, and the interest of the said Mistress Widow Jeanne Caroline Cave was acquired as follows, to wit: By a judgment rendered on the 11th day of January, 1886, by the Honorable Aleck Boarman, judge of the fifth circuit, United States circuit court, western district of Louisiana, in the matter of the suit of Jeanne Caroline Cave, widow, *vs.* Marceline Cavailhez, widow, *et als.*, No. 33 of the docket of said court, she was decreed to be the owner, as the surviving widow in community, of the real estate above described—that is to say, of the one
311 undivided half thereof; and it was further decreed that she have judgment against the estate of Baptiste Cavailhez in the further sum of five thousand three hundred dollars, with legal interest from the 25th of February, 1884, and that her mortgage to secure the aforesaid sum and interest upon the property of Baptiste Cavailhez take effect from the 13th day of April, 1863, be recognized and enforced.

The said property to so remain mortgaged and hypothecated until the full and final payment of the aforesaid promissory note in capital and interest, the said mortgagor hereby binding himself not to sell, alienate, or encumber the same to the prejudice of these presents.

And the said mortgagor, moreover, binds himself, in case it shall become necessary to institute suit for the recovery of the amount of said note or any part thereof, to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. of the amount sued for.

The parties hereto dispenses with the production of a certificate of mortgage from the office of the clerk of the district court for the parish of Vermilion, as otherwise required by law, and exonerate the undersigned notary from all responsibility in the premises.

It is understood and agreed by and between the parties that when the above-described note shall have become due Mr. F. Chapuis, upon payment of not less than two hundred dollars in account, shall be entitled to a prorogation of the payment thereof for one year longer, under the terms and conditions as hereinafter specified; all of which is hereby accepted by the said Mr. Jacob H. Abraham for and in behalf of his said firm of H. Abraham & Son.

312 Thus done and passed in my office, at the city of New Orleans aforesaid, on the day and date first above written, in the presence of Messrs. Albert Lesseps and Paul E. Voorhies, competent witnesses, who sign these presents, together with the parties and me, notary public, after reading the whole.

(Original signed) *P. Pro* F. CHAPUIS,
" A. M. MIR.
" JACOB H. ABRAHAM.
" ALBERT LESSEPS.
" P. E. VOORHIES.
" M. VOORHIES,
Notary Public.

STATE OF LOUISIANA, }
City of New Orleans. }

I, Martin Voorhies, notary public in and for this city and the parish of Orleans, duly commissioned and qualified, do hereby certify the above and foregoing to be a true and correct copy of the original act extant and of record in the archives of my office.

In faith whereof I hereunto set my hand and affix my seal of office this eighteenth day of April, A. D. 1890.

M. VOORHIES,
[SEAL.] *Notary Public.*

EXHIBIT "G."

Recorded in vol. 3 of Mortgages, No. 1335, page 174, on this the 15th day of April, A. D. 1890.

ALCIDE LE BLANC,
[SEAL.] *Clerk and Recorder.*

Filed Feb'y 11, '93.

ALCIDE LE BLANC,
Clerk of Court.

Filed Dec. 15, '97.
JOS. G. LE BLANC,
Dy Clerk of Court.

313 45.

Note Annexed to Petition No. 39 and Secured by Mortgage No. 46.

EXHIBIT H.

$1,401.12. NEW ORLEANS, *May 14th*, 1891.

On the fifteenth day of February next after date I promise to pay to the order of myself one thousand four hundred and one $\frac{12}{100}$ dollars, at the counting-room of Messrs. H. Abraham & Son, in this city, for value received, with interest, at the rate of eight per cent. per annum, from this date until paid.

F. CHAPUIS.

No. 426. Due Feb'y 15, 1892.

[Written across the face in red ink:] *Ne varietur* for identification with an act passed before me. New Orleans, May 14th, 1891. M. Voorhies, notary public.

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

46.

Act Annexed to Petition No. 39, Exhibit I.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Acknowledgement, with mortgage, pledge, and pawn, &c., Francois Chapuis, favor of H. Abraham & Son.

MAY 14TH, 1891.

Be it known that on this fourteenth day of the month of May, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States of America
314 the one hundred and fifteenth, before me, Martin Voorhies, a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Francois Chapuis, of the parish of Vermilion, State of Louisiana, and—

2nd. Mr. Henry Abraham, a member of the commercial firm of H. Abraham & Son, of the city of New Orleans and herein representing said firm.

And the said Francois Chapuis declared that he is justly and truly indebted unto said commercial firm of H. Abraham & Son in the full sum of three thousand seven hundred and twenty two $\frac{13}{100}$ dollars, as per statement approved and accepted, hereto annexed, and made part hereof; that said indebtedness is formed and composed as follows, to wit:

1st. One promissory note drawn by him to his own order and by him endorsed, dated the 7th day of April, A. D. 1890, payable one year after date, with interest, at the rate of eight per cent. per annum, from date until paid, for the sum of one thousand three hundred and three $\frac{70}{100}$ dollars	$1,303.70
The interest due thereon to date	124.04
	$1,427.74

Which said note is paraphed "*Ne varietur*" by the undersigned notary for identification with an act passed in this office on the 7th day of April, A. D. 1890, and is secured by mortgage and pledge on certain property described in said act and situated in said parish of Vermilion

2nd. One certain promissory note drawn by him to his own order and by him endorsed, dated the first day of August, A. D. 1888, for the sum of six hundred and eighty-seven $\frac{20}{100}$ dollars—

315	Brought forward.....	$1,427.74
	payable one year after date.....	687.20
	Interest and costs accrued thereon.....	193.93

Which said note is paraphed "*Ne varietur*" by R. C. Stockton, late a notary public, in this city, for identification with an act of even date, passed before him, securing the payment of said note by mortgage on certain property therein described and situated in said parish of Vermilion, and which said note is now held and owned by H. Abraham & Son by virtue of an act of subrogation passed before Joseph Duvigneaud, a notary public, in this city, under date of the eleventh day of March last past (1891). And third. In ready current money loaned and advanced to him by the said H. Abraham & Son, the sum of fourteen hundred $\frac{18}{100}$ dollars..... 1,400.18

With interest to date..... .94

$3,722.93

Now, the said Francois Chapuis declared that he does hereby acknowledge and maintain the validity and legality of the two acts of mortgage aforerecited, the one passed in this office on the seventh day of April, A. D. 1890, the other passed on the first day of August, A. D. 1888, as also the validity and legality of the aforerecited act of subrogation passed before Jos. Duvigneaud, a notary of this city, on the eleventh day of March, 1891.

That the present acknowledgement of his said indebtedness is not to be in any way considered as a novation of the same, but, on the contrary, as an affirmance of the validity and legality of the
316 mortgages granted to secure its payment, with all the terms, clauses, and conditions, as set forth in said acts, to remain in full force and effect, to all intents and purposes.

Now, in order to represent and liquidate the amount of the loan hereinabove thirdly mentioned, amounting to the sum of fourteen hundred and one $\frac{12}{100}$ dollars, and to secure the payment thereof, with all eventual interests, costs, &c., the said Francois Chapuis has presently furnished his certain promissory note drawn by him to his own order and by him endorsed, dated this day, for the sum of fourteen hundred and one $\frac{12}{100}$ dollars, payable on the fifteenth day of February next after date, at the counting-room of Messrs. Abraham & Son, in this city, with interest, at the rate of eight per cent. per annum, from date until paid; which said note, after having been paraphed "*Ne varietur*" by me, notary, for identification herewith, was delivered to the said Mr. Abraham, who acknowledges the receipt thereof.

In case of suit to enforce the collection of said note Mr. Francois Chapuis agrees and binds himself to pay the fees of the attorney-at-law who may be employed for that purpose; which fees are hereby fixed at five per cent. of the amount sued for.

Now, in order to insure the full and punctual payment of the above-described notes in capital and interest, with all attorneys' fees and premiums of insurance as herein specified, the said Francois Chapuis declared that he does by these presents mortgage, affect, and hypothecate in favor of the said H. Abraham & Son, and to enure to the use and benefit of any and all holder or holders of said promissory notes, the said Mr. Henry Abraham, acting as aforesaid, being here present and accepting, the following-described property, to wit:

A certain plantation situated on the east side of the Bayou
317 Vermilion, in the parish of Vermilion, in this State, having a front of ten arpents on said bayou by a depth of forty arpents, bounded west by said Bayou Vermilion, east by public lands, south by property of Numa St. Julien, north by property of Euclide Roy, together with all the buildings and improvements thereon, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining.

Being the same property which the said F. Chapuis acquired as follows, to wit: By judgment of the United States circuit court for the fifth circuit, western division of Louisiana, dated the 11th day of January, A. D. 1886, in the suit entitled Jeanne Caroline Cave, widow, *vs.* Marceline Cavailhez, widow, *et als.*, No. 33 of the docket of said court, Mrs. Caroline Cave, widow, was decreed to be the owner of the one undivided half of the above-described property and to judgment against the other undivided half in the sum of five thousand three hundred dollars, with legal interest from April 13th, 1863.

And in the matter of the succession of the said Jeanne Caroline Cave, widow, J. B. Cavailhez, No. 17091 of the docket of the civil district court for the parish of Orleans, Francois Chapuis was recognized as her sole heir and universal legatee and as such put in possession.

And subsequently, on the third day of June, the said Francois Chapuis acquired, at sheriff's sale, the undivided half of said property belonging to the estate of J. B. Cavailhez, sold under order of the twenty-fifth judicial district court of Louisiana in and for the parish of Vermilion, issued in the matter of the said estate.

The said property so to remain mortgaged and hypothecated until the full and final payment of the aforesaid promissory note, in capital and interest, the said mortgagor hereby binding himself and his heirs not to sell, alienate, or encumber the same to the prejudice of these presents.

318 The said mortgagor further binds himself to keep the buildings on above-described property constantly insured against loss by fire in one of the good insurance companies of this city, and to transfer such insurance to the mortgagee or any other hold- or holders of the above-described note up to the sum of two

thousand five hundred dollars, said mortgagor hereby authorizing said mortgagee or any holder or holders of above-described note to cause said insurance to be effected on his default at a premium not exceeding seven per cent.

Mr. Francois Chapuis here declared that the above-described property is free from any encumbrance in his name, with the exception of the two mortgages hereinabove recited, the one dated August 1st, 1888, passed before R. C. Stockton, notary, to secure $687.20, interests and costs, and the other dated April 7th, 1890, passed in this office, to secure $1,303.70, interest and costs, and both of which belong to the present mortgagee, and the said F. Chapuis binds himself to produce a proper certificate to that effect, to be annexed to the present act, within the next fifteen days.

And the said Mr. Henry Abraham, acting as aforesaid, declared that he does hereby prorogue the payment of the two promissory notes hereinabove firstly and secondly described up to the fifteenth day of next February, A. D. 1892, without novation of any kind; all of which is hereby accepted by Francois Chapuis.

And in further consideration of the advances thus made to him, the said F. Chapuis promises and binds himself to ship and consign to said form of H. Abraham & Son, in this city, the entire crop of cotton gathered during this current year on the above-described plantation, as also all the cotton that he will control, to an amount not less than two hundred bales, or pay a commission of one
319 dollar and twenty-five cents on each bale falling short of said amount, and all cotton thus consigned shall be sold at the usual rate of commission business, and the net proceeds thereof placed to his credit on open account in the manner following, to wit: One-third to be imputed, *pro tanto*, to the payment of the entire indebtedness herein acknowledged, and the balance to be placed to the credit of Mr. F. Chapuis on open account for settlement on the 31st day of January next, 1892.

And to further insure the payment and reimbursement of all the advances made as herein specified the said F. Chapuis declared that he does by these presents pledge and pawn, to the full extent of the law, unto and in favor of the said H. Abraham & Son the entire crop of cotton raised and gathered on the above-described and herein-mortgaged plantation.

Thus done and passed in my office, at the city of New Orleans, in the presence of Messrs. Lucien Voorhies and Jerome Eugene Tourne, competent witnesses, who have signed these presents, together with the parties and me, notary, on the day and date first above written.

(Original signed) F. CHAPUIS.
H. ABRAHAM & SON,
Per H. ABRAHAM.
J. E. TOURNE.
LUCIEN VOORHIES.
M. VOORHIES,
Notary Public.

STATE OF LOUISIANA, }
City of New Orleans. }

I hereby certify the above and foregoing to be a true copy of the original act passed before me and extant of record in the archives of my office.

320 In faith whereof I hereunto set my hand and affix my seal of office this 16th day of May, A. D. 1891.

[SEAL.] M. VOORHIES,
Notary Public.

EXHIBIT J.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify the above and foregoing to be duly recorded in this office in vol. 3 of Mortgages, pages 567, '8, '9, 10, & 11, No. 1592, May 22nd, 1891.

ALCIDE LE BLANC,
Clerk and Recorder.

Filed Feb'y 11th, 1893.

ALCIDE LE BLANC, *Clerk.*

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

47.

Sheriff's Sale Annexed to Petition No. 39.

EXHIBIT K.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Be it known that on the third day of June, A. D. 1889, by virtue of a commission issued from the hon. 25th judicial district court of the State of Louisiana in and for the parish of Vermilion, in the matter of the succession of J. B. Cavailhez, and to me directed, authorizing and empowering me to sell at public auction for

321 cash on the day of the sale, to pay debts, the interest in and to a certain tract of land in said parish belonging to said succession, I, Alphonse L. Le Blanc, sheriff in and for said parish, did make said sale at the late residence of the deceased in said parish, and, after having announced to the bystanders in a loud and distinct voice the terms and conditions of the sale, proceeded to adjudicate — property in the manner and form following, to wit:

Lot 1. The undivided one-half of a certain tract of land situated in this parish on the east bank of the Bayou Vermilion, measuring ten arpents front by forty arpents in depth, more or less, bounded above by Lucien S. Broussard, below by Emile Romero, east by Joseph Choate, and west by the Bayou Vermilion, together with all the buildings and improvements situated thereon, consisting of

one dwelling-house, kitchen and pantry, one barn and stables, one sugar-house and mill building, kettles, one steam-engine, one cotton gin and building, four tenant houses, and about 500 panels fencing, adjudicated to Francois Chapuis for the price and sum of three thousand three hundred and seventy dollars, by being the last and highest bidder.

(Signed) F. CHAPUIS. $3,370.00.

Witnesses:
GEO. W. SUMMERS AND
J. A. LEMAIRE.

2nd. The undivided half of a tract of land situated in this parish on the west bank of the Bayou Vermilion, measuring one arpent front by forty arpents deep, bounded north by Auguste Gallet, below by Bazile Saux and John Colomt, east by Bayou Vermilion, and west by Sosthene Catalan, adjudicated to Francois Chapuis for the price and sum of one hundred and fifty dollars ($150.00), he being the highest bidder and the last.

(Signed) F. CHAPUIS.

Witnesses:
GEO. W. SUMMERS AND
J. A. LEMAIRE.

322 There being no other property known or shown to me for sale, I have closed the present process verbal, amounting to the sum of three thousand five hundred and twenty dollars, and have signed these presents in presence of Messrs. Geo. W. Summers and J. Adonis Lemaire, competent witnesses, hereto subscribed.

(Original signed) A. L. LE BLANC, *Sheriff.*

Witnesses:
GEO. W. SUMMERS AND
J. A. LEMAIRE.

Filed June 4th, 1889.

(Signed) GEO. W. SUMMERS,
D'y Clerk of Court.

Recorded in vol. 6 of Conveyances, No. 3312, page 434, June 5th, 1889.

(Signed) GEO. W. SUMMERS,
D'y Clerk and Recorder.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify that the foregoing is a true and correct copy of the original on file and of record in this office.

Witness my official signature and seal of office this 2nd day of March, A. D. 1891.

[SEAL.] GEO. W. SUMMERS,
D'y Clerk and Recorder.

Filed Feb'y 11, '93.

ALCIDE LE BLANC,
Clerk of Court.

Filed Dec. 15, '97.
JOS. G. LE BLANC.
D'y Clerk of Court.

323 48.

Judgment of Court in Suit No. 540.

STATE OF LOUISIANA:

District Court, Parish of Vermilion.

H. ABRAHAM & SON
vs.
FRANCOIS CHAPUIS. } No. 540.

On trial of the above entitled and numbered suit, by reason of the law and the evidence being in favor of the plaintiffs and against the defendant—

It is ordered, adjudged, and decreed that the plaintiffs, H. Abraham & Son, a firm composed of Henry Abraham and Jake C. Abraham, do hereby have judgment against the defendant, Francois Chapuis, for the sum of three thousand three hundred and ninety-two 2/100 dollars, with eight per cent. per annum interest on six hundred and eighty-seven 20/100 dollars thereof from August 1st, 1888, until paid, and eight per cent. per annum interest on thirteen hundred and three 70/100 dollars thereof from March 10, 1890, and eight per cent. per annum interest on fourteen hundred and one 12/100 dollars thereof from May 14, 1891, until paid, with five per cent. additional on the aggregate amount thereof as attorneys' fees and for all costs in this suit.

It is further decreed that the special mortgage given to secure the notes herein sued on as claims by plaintiffs and set forth in their petition be, and the same are hereby, recognized as existing in favor of said plaintiffs and bearing upon the following-described property, to wit:

A certain plantation situated in the parish of Vermilion, on the
east side of the Bayou Vermilion, having a front of ten
324 arpents on said bayou by a depth of forty arpents, bounded
west by said Bayou Vermilion, east by public lands, south by property of Numa St. Julien, and north by property of Euclide Roy, together with all the buildings and improvements thereon situated, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining, and all work stock, agricultural implements, and such other appurtenances thereto attached.

It is further ordered that execution issue on this judgment, and that said property be sold in satisfaction of this judgment.

Thus done and signed in open court, at Abbeville, La., on this 1st day of April, 1893.

A. C. ALLEN,
Judge 17th Judicial District Court.

Filed April 1st, 1893.

ALCIDE LE BLANC,
Clerk of Court.

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

49.

Mortuary Proceedings Had in the Succession of Francois Chapuis, No. 229.

To the honorable the judge of the 17th judicial district court in and for the parish of Vermilion, La.:

The petition of Jake H. Abraham, a resident of the parish of Orleans, with respect represents:

That Francois Chapuis recently departed this life at his domicile in the parish of Vermilion, La., where he has resided for some years past.

325 That said Chapuis, at the time of his death, owned certain property in the said parish of Vermilion consisting of personal effects and an undivided one-half interest in a certain plantation on Bayou Vermilion heretofore known as the Benedict plantation, which said half interest in said plantation he acquired at probate sale from the succession of Jean Baptiste C-vailhez some years since. Petitioner represents that the succession of Francois Chapuis is largely indebted, and that an administration thereof is necessary.

Petitioner further represents that he is a member of a commercial firm of H. Abraham & Son, of the city of New Orleans, La., which said firm has unpaid judgment against said Chapuis amounting in the aggregate, with interest and costs, to more than four thousand dollars.

That petitioner thus being a creditor of said Chapuis is entitled to be appointed administrator of his succession.

That it is necessary that an estimative inventory of the property belonging to said succession be made.

Wherefore, the premises considered, petitioner prays that Alcide Le Blanc, clerk of the court and *ex officio* recorder and notary public, be authorized and ordered to make such inventory, and that Elie Montagne, Jr., and H. B. Lyons be appointed as appraisers to assist in the taking of said inventory.

Petitioner further prays that due notice of his application to be appointed administrator of the succession of Francois Chapuis be given by ten days' publication of the usual notice required by law in such cases, and that after the lapse of the legal delays petitioner

be appointed as such administrator upon giving the necessary bond and complying with the other requisites of law.

And he prays for general relief, &c., &c.

326 (Signed) W. A. WHITE,
C. DE BAILLON,
Att'ys for Petitioner.

Order.

Let inventory be taken and let notice of application of Jake H. Abraham to be appointed administrator of the succession of Francois Chapuis be given as prayed for in the foregoing petition.

Granted at chambers, at Abbeville, La., on this 19th day of June, 1893.

(Signed) A. C. ALLEN,
Judge 17th Judicial District Court.

Filed June 19th, 1893.

(Signed) ALCIDE LE BLANC,
Clerk of Court.

Commission for Inventory.

STATE OF LOUISIANA:

17th Judicial District Court, Parish of Vermilion.

Succession of FRANCOIS CHAPUIS. No. 229.

To Alcide Le Blanc, clerk of court and *ex officio* recorder and notary public in and for the parish of Vermilion, Greeting:

By virtue of a decree of our honorable district court aforesaid, granted in the matter entitled and numbered as above, you are hereby authorized and empowered to take and make an estimative inventory of the property, real and personal, which can be found in the parish of Vermilion belonging to said succession and to be therein aided and assisted by Elie Montagne, Jr., and H. B. Lyons, appraisers appointed for that purpose, and make due returns
327 of your proceedings with this writ to our said court in the manner prescribed by law.

Witness the Honorable A. C. Allen, judge of said court, this the 19th day of June, A. D. one thousand eight hundred and ninety-three.

(Signed) ALCIDE LE BLANC,
Clerk of Court.

Inventory.

STATE OF LOUISIANA, }
Parish of Vermilion. }

We, Elie Montagne, Jr., and Henry B. Lyons, of said parish, do solemnly swear that we will appraise such property as may be shown or designated to us for that purpose belonging to the succession of Francois Chapuis, situated in this parish, at a fair cash

valuation, to the best of our knowledge and judgment, so help us God.

(Signed) E. MONTAGNE, JR.
" H. B. LYONS.

Sworn to and subscribed before me this 5th day of July, A. D. 1893.

(Signed) ALCIDE LE BLANC,
Clerk and Notary Public.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Be it known that on this the 5th day of July, A. D. one thousand eight hundred and ninety-three, by virtue of a commission issued from the honorable 17th judicial district court in the matter of the succession of Francois Chapuis and to me directed, authorizing and empowering me to take and make an estimative inventory of all the property, real and personal, belonging to said succession situated in this parish, and to be therein aided and assisted by Messrs. Elie Montange, Jr., and Henry B. Lyons, appraisers, and appointed for that purpose, I, Alcide Le Blanc,
328 clerk of the district court and *ex officio* recorder and notary public, duly commissioned and sworn, in and for the parish of Vermilion, *and* have caused said appraisers to appear before me at the late residence of the deceased, and, after having sworn them in the manner required by law, proceeded to take and make an estimative inventory in the manner and form following, to wit:

1. The undivided half interest in and to a certain tract of land situated in this parish, on the east bank of the Bayou Vermilion, measuring ten arpents front by forty arpents in depth, more or less, bounded above by Lucien S. Broussard, below by Aurlien Premeaux, east by public road, and west by the Bayou Vermilion, together with all the buildings and improvements situated thereon, appraised at the price and sum of three thousand four hundred dollars..... $3,400.00

2nd. The undivided one-half interest of a certain strip of land situated on the west — Bayou Vermilion, measuring forty feet wide by forty arpents deep, bounded above by August Gallet, below by Eraste Bouguet and John Colomb, and west by O. Onezime Broussard, appraised at twenty-five dollars..... 25.00

3rd. The undivided interest of the growing crop on the plantation..... 100.00

4th. One wagon..... 25.00

5th. An old buggy and harness..... 10.00

6th. One plow, one harrow, and one cultivator..... 10.00

7th. One cow..... 10.00

8th. Two gentle horses, at $25.00 each..... 50.00

9th. One flat-boat and rope..... 50.00

Total..... $3,680.00

There being no other property known or shown to us, appraisers and notary, for appraisement, we have closed said estimative
329 inventory amounting to the sum of three thousand six hundred and eighty dollars, and have signed the same in presence of Messrs. Constantine Angelman and Alexis Bernet, competent witnesses, of said parish, after due reading of the whole.

(Signed) E. MONTAGNE, JR.
H. B. LYONS.

Witnesses:
C. ANGELMAN.
ALEXIS BERNET.

(Signed) ALCIDE LE BLANC,
Clerk and Notary Public.

Filed July 5th, 1893.
(Signed) ALCIDE LE BLANC,
Clerk of Court.

STATE OF LOUISIANA,
Parish of Vermilion.

I hereby certify that the above and foregoing are true and correct copies of all the proceedings had in the succession of Francois Chapuis, No. 229 of the probate docket of the district court in and for the parish and State above written.

Witness my official signature this 20th day of July, 1893.
[SEAL.] GEO. W. SUMMERS,
D'y Clerk District Court.

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

50.

Mortuary Proceedings Had in the Succession of Jean Baptiste Cavailhez, 77 & 88.

330 Petition for letters of administration, inventory, &c.

To the honorable the 25th judicial district court, holding sessions in and for the parish of Vermilion, State of Louisiana:

The petition of Francois Chapuis, residing within the jurisdiction of this honorable court, with respect represents:

That Jean Baptiste Cavailhez departed this life in the parish of Vermilion, in this State, on the — day ——, 188–; that said deceased at the date of his death was possessed of property, real and personal, as well as property rights and credits situated within this parish; that petitioner is a creditor, having claims against the estate of said deceased, and that an administration thereof is necessary and proper in the premises, and your petitioner makes herewith application for said appointment as administrator of said decedent's estate.

Wherefore petitioner prays that this his application for letters of administration upon the estate of Jean Baptiste Cavailhez be published according to law; that Lastie Broussard, Esq., notary, be appointed to take inventory herein, and that, after due proceedings, that your petitioner be appointed administrator of the estate of said deceased, Jean Baptiste Cavailhez; that letters of administration issue to him as such upon complying with all the requisites of the law, and petitioner prays for such further orders and decrees as may be necessary in the premises, and for general relief.

(Signed) LEONARD, MARKS & BRUENN,
M. VOORHIES, *Attorneys.*

Personally came and appeared the undersigned, who, being sworn, deposes and says that Jean Baptiste Cavailhez departed this life on the — day of ——, 188–, and the allegations of the
331 foregoing petition are true and correct.

(Signed) F. CHAPUIS.

Sworn to and subscribed before me this 30th day of January, 1888.

(Signed) LASTIE BROUSSARD,
Clerk District Court.

Order.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Let notice of the application of F. Chapuis to be appointed administrater of the succession of J. B. Cavailhez be published in the "Meridional," the official journal of said parish. It is further ordered that a commission issue to Lastie Broussard, Esq., clerk and recorder for said parish, authorizing and empowering him to make and take an estimate inventory of all the property of said succession, and that Messrs. Lucien S. Broussard and John A. Brookshire be, and they are hereby, appointed to assist in taking said inventory.

Given under my hand, at office, this 30th day of January, A. D. 1888, and filed on same date.

(Signed) LASTIE BROUSSARD,
Clerk of Court.

Order.

STATE OF LOUISIANA, }
Parish of Vermilion. }

In the Matter of the Application of F. CHAPUIS in the Above Petition.

332 By reason of the application of the notice required by law having been published in the official journal of this parish, and no opposition having been filed thereto during the legal delay:

It is therefore ordered that petitioner, Francois Chapuis, be allowed to qualify as administrator of the succession of J. B. Cavail-

hez upon complying with the requirements of the law in such cases.

Given at office this 18th day of February, 1888, and filed on same date.

(Signed) LASTIE BROUSSARD,
Clerk of Court.

Commission for Inventory.

STATE OF LOUISIANA:

25th Judicial District Court, Parish of Vermilion.

Succession of J. B. CAVAILHEZ. No. 88.

To Lastie Broussard, clerk and notary public in and for the parish of Vermilion, Greeting:

By virtue of a decree of our honorable district court aforesaid granted in the matter numbered and entitled as above—

You are hereby authorized and empowered to take and make an estimative inventory of the property, real and personal, which can be found in the parish of Vermilion belonging to said succession, and to be therein aided and assisted by Messrs. Lucien S. Broussard and John A. Brookshire, appraisers, appointed for that purpose, and make due return of your proceedings, with this writ, to our said court in the manner prescribed by law.

333 Witness the Honorable C. De Baillon, judge of said court, this 4th day of February, A. D. one thousand eight hundred and eighty-eight.

(Signed) LASTIE BROUSSARD,
Clerk of Court.

Inventory.

STATE OF LOUISIANA, }
Parish of Vermilion. }

We, Lucien Broussard, of the parish of Lafayette, and John A. Brookshire, of the parish of Vermilion, do solemnly swear that we will appraise such property as may be shown or designated to us for that purpose as belonging to the succession of Jean Baptiste Cavailhez, situated in this parish, at a fair cash valuation, to the best of our knowledge and judgment, so help us God.

(Signed) LUCIEN BROUSSARD.
" J. A. BROOKSHIRE.

Sworn to & subscribed before me this 4th day of February, 1888.

(Signed) LASTIE BROUSSARD,
Clerk and Notary Public.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Be it known that on this the fourth day of February, 1888, by virtue of a commission issued from the 25th judicial district court in and for said parish, in the matter of the succession of J. B. Ca-

vailhez, and to me directed, authorizing and empowering me to take and make an estimative inventory of all the property, real and person-, belonging to said succession to be found in this par-
334 ish, and to be therein aided and assisted by Messrs. Lucien S. Broussard, of the parish of Lafayette, and John A. Brookshire, of the parish of Vermilion, appraisers, I, Lastie Broussard, clerk of the district court and notary public in and for said parish, duly commissioned and sworn, have caused said appraisers to appear before me at my office, and after having sworn them, as required by law, have proceeded to take said inventory in the manner and form following, to wit:

1st. The undivided one-half of a certain tract of land situated in this parish on the east bank of the Bayou Vermilion, measuring ten arpents front by forty arpents in depth, more or less, bounded above by Lucien S. Broussard, below by Emile Romero, east by Jos. Shoate, and west by the Bayou Vermilion, together with all the buildings and improvements situated thereon, consisting of one dwelling-house, kitchen and pantry, one barn and stable, one sugar-house and mill buildings, kettles and steam-engine, one steam cotton gin and building, four tenant-houses, and about 500 panels of fencing, it being known as the "Remick plantation," and formerly occupied by said deceased Cavailhez; appraised at six thousand five hundred and forty dollars, the half thereof amounting to three thousand two hundred and seventy dollars..... $3,270.00

2nd. The undivided half of a certain town lot situated in the town of Abbeville and being lot No. 33 of the Megret's portion of said town, with the buildings and improvements situated thereon, bounded west by Jefferson street, north by Concordia street, south by lot number 34, and east by lot number 41; appraised at the price of two thousand dollars, the one-half thereof being one thousand dollars..... 1,000.00

3rd. The undivided one-half of a tract of land situated in this parish on the west bank of the Bayou Vermilion, measuring one arpent front by 40 arpents deep, bounded above by Auguste Gallet, below by Bazile
335 Saux and John Colomb, east by Bayou Vermilion, and west by Sosthene Catalan; appraised at two hundred dollars, the half being..... 100.00

$4,370.00

There being no other property designated to us for appraisement we have closed the present inventory, the half thereof belonging to the succession amounting to four thousand three hundred and seventy dollars.

Thus done and signed in presence of Messrs. Willie R. Ellis and

Oliver H. O'Bryan, competent witnesses, after due reading of the whole.

(Signed) LUCIEN S. BROUSSARD.
J. A. BROOKSHIRE.

Witnesses:
WILLIE R. ELLIS.
O. H. O'BRYAN.

(Signed) LASTIE BROUSSARD,
Clerk and Notary Public.

Petition of A. Moulor.

To the honorable the judge of the 25th judicial district court in and for the parish of Vermilion, La.:

The petition of A. Moulor, a resident of said parish of Vermilion, respectfully represents:

That the succession of Baptiste Cavailhez has some time since been opened in this parish, and an estimative inventory of the property thereof taken.

That Mr. F. Chapuis, who had made application to be appointed administrator thereof, has withdrawn his application; that said succession is without an administrator, and that it is necessary that one shall be appointed in order to settle the affairs of said
336 succession. He represents that he desires to be appointed as such administrator.

Wherefore he prays that after the notice of his application has been given in the manner required by law and the legal — shall have elapsed, he be appointed and allowed to qualify as such administrator; and he prays for general relief, &c.

(Signed) A. MOULOR.

Filed March 20, '89.

(Signed) ALCIDE LE BLANC, *Clerk.*

Order.

Let notice of the application of Armand Moulor to be appointed administrator of the succession of J. B. Cavailhez be published in the Meridional, the official journal of said parish, as the law requires.

Given under my official signature this 20th day of March, 1889, and filed on the same date.

(Signed) ALCIDE LE BLANC,
Clerk of Court.

STATE OF LOUISIANA,
Parish of Vermilion.

The application of Armand Moulor to be appointed administrator of the succession of J. B. Cavailhez having been published in the official journal of this parish, and no opposition having been made thereto during the legal delay—

It is therefore ordered that he be allowed to qualify as such and assume the duties of said office upon furnishing bond and taking the oath required by law.

Given under my official signature this 8th day of April, 1889, and filed on the same date.

(Signed) ALCIDE LE BLANC,
Clerk of Court.

337 Judicial District Court, Parish of Vermilion, Louisiana.

Succession of J. B. CAVAILHEZ. No. —.

To the honorable the judge of the said court:

The petition of Armand Moulor, a resident of the parish of Vermilion, State of Louisiana, with respect represents—

That the succession of J. B. Cavailhez, deceased, has been opened in this honorable court under the number as above; that one Francois Chapuis filed an application for the appointment as administrator of said succession; that due notice and advertisement of same was made according to law, but that after the legal delays said Francois Chapuis failed to qualify as such administrator and has not qualified, and petitioner avers that said Francois Chapuis has no intention of qualifying; that petitioner is anxious and desirous to be appointed as administrator of the succession of J. B. Cavailhez and of qualifying as such, as provided for by law.

Wherefore petitioner prays, the premises duly considered, that he be appointed and qualified as administrator of the succession of Jean B. Cavailhez forthwith, as provided for by and according to law, and petitioner prays for such further orders and decrees as may be necessary herein and for general relief.

(Signed) LEONARD, MARKS & BRUENN,
Of Counsel for Petitioner.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Know all men by these presents that we, Armand Moulor, as principal, of the parish of Vermilion, and Edward Noel, Felicien Primeaux, Arvenue Hebert, Duplex Landry, Joseph F. Landry, and Emile Duhon, also of the parish of Vermilion, as
338 his sureties, are held and firmly bound *in solido* unto the creditors, the heirs and legal representatives of the succession of J. Bte. Cavailhez, in the just and full sum of five thousand four hundred and seventy dollars, lawful money of the United States of America, and for the faithful payment of which sum, well and truly to be made, we bind ourselves firmly by these presents.

Dated at Abbeville, La., this 20th day of April, A. D. 1889.

The conditions of this obligation is such that if the said above Armand Moulor shall well and faithfully administer the affairs of said succession as administrator thereof and shall render a true and correct account of his administrations, and shall, moreover, settle

with fidelity and honesty for all moneys which may be intrusted to him in his said capacity, then this obligation shall be null and void; otherwise of full force and law.

(Signed) A. MOULOR.
EDWARD NOEL.
FELICIEN PRIMEAUX.
ARVENUE HEBERT.
his
DUPLEX x LANDRY.
mark.
his
JOSEPH x LANDRY.
mark.
EMILE DUHON.

Signed before me and accepted by me this 20th day of April, A. D. 1889, and filed same date.

(Signed) ALCIDE LE BLANC,
Clerk of Court.

Oath of Appointment of Administrator.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I, Armand Moulor, of the parish of Vermilion, do solemnly swear that I will well and faithfully discharge and perform all
339 and singular the duties incumbent on me as administrator of the succession of J. Bte. Cavailhez, to the best of my ability and understanding, according to law, so help me God.

(Signed) A. MOULOR.

Sworn to and subscribed before me this 20th day of April, A. D. 1889.

(Signed) ALCIDE LE BLANC,
Clerk of Court.

STATE OF LOUISIANA, }
Parish of Vermilion. }

Be it known that I, Alcide Le Blanc, clerk of the district court in and for the parish of Vermilion, by virtue of the powers in me vested by law, have this day appointed and by these presents do appoint and confirm Armand Moulor, of the parish of Vermilion, as administrator of the succession of J. Bte. Cavailhez, the premises and formalities of law in such case made and provided having been complied with.

Know ye, therefore, that full faith and credit must be given to all the legal acts of the said Armand Moulor in his said capacity.

Given under my official signature this 20th day of April, A. D. 1889, and filed on same date.

(Signed) ALCIDE LE BLANC,
Clerk of Court.

Petition, &c., and Order for Sale.

25th Judicial District Court, Parish of Vermilion, State of Louisiana.

Succession of JEAN B. CAVAILHEZ. No. —.

340 To the honorable the judge of said court:

The petition of Armand Moulor, duly qualified as the administrator of the succession of Jean Baptiste Cavailhez, with respect represents:

That the said estate of said deceased, J. B. Cavailhez, is largely indebted to various persons in various sums of money and is encumbered by claims of judgment creditors, which said claims are now due and remain unpaid; that the said charges for opening the proceedings herein and the fees of attorneys are due and owing, and it is necessary that some means be provided for the payment of same.

Petitioner represents that he, as administrator, has no funds in hand, there being *one* existing or belonging — said estate, and as there is real property situated in this parish in which the estate of said deceased, J. B. Cavailhez, has some interest, petitioner further suggests that same be ordered to be sold for cash for the purpose of discharging and, as far as possible, liquidating the same, due as above stated: that said interest of said decedent's estate is vested in and attached to a certain plantation situated on the Bayou Vermilion, in this parish, and also in and to a certain tract of land situated also on said bayou opposite to and fronting the aforesaid plantation, all of which said property and piece or portions of land are more particularly described and identified in the inventory herein taken and on file in these proceedings, which said inventory is hereto annexed for better reference and as part hereof.

Wherefore, the premises and the affidavit hereto attached being duly considered, your petitioner prays that an order of sale be decreed herein, directing and commanding the sheriff of the parish of Vermilion to duly advertise for said sale the interest of the succession of Jean Baptiste Cavailhez, for cash, in and to the said
341 plantation and said piece or portion of land, both lying and being opposite to each other and fronting on Bayou Vermilion, in this parish, for the purposes as fully hereinabove set out and stated; that said sale be effected by said sheriff after all due and legal notices and advertisements have been made and given, as provided by law, and that said sale be to the highest and last bidder for cash; and petitioner prays for all further orders and decrees, and for general and equitable relief.

(Signed) LEONARD, MARKS & BRUENN,
Of Counsel for Petitioner.

Personally appeared before me, the undersigned authority, Armand Moulor, who, being duly sworn, deposes and says that all

the facts and allegations as set forth in the foregoing petition are true and correct.

(Signed) A. MOULOR.

Sworn to & subscribed before me this 1st day of May, 1889.

(Signed) ALCIDE LE BLANC,
Clerk of Court.

Considering the foregoing petition—

It is ordered that a commission do issue to the sheriff of the parish of Vermilion, directing him to sell, after the proper advertisement, as required by law, the property described in the foregoing petition, for cash.

At chambers, Lafayette, this 2nd day of May, A. D. 1889.

(Signed) C. DE BAILLON,
Judge 25th Judicial District, La.

Filed May 2nd, 1889.

GEO. W. SUMMERS, *D'y Clerk.*

342 *Commission for Sale.*

25th Judicial District Court, Parish of Vermilion.

Succession of J. Bte. Cavailhez. No. 88.

To A. L. Le Blanc, sheriff of the parish of Vermilion, Greeting:

By virtue of an order issued from the 25th judicial district court in the matter of the above entitled and numbered succession, you are hereby authorized and empowered to sell at public auction, after due advertisement, for cash, to pay debts, to the last and highest bidder, the following-described property belonging to the said succession, viz:

1st. The undivided half of a certain tract of land situated in this parish on the east bank of the Bayou Vermilion, measuring ten arpents front by forty arpents in depth, bounded north by Lucien S. Broussard, south by Emile Romero, east by Joseph Shoate, and west by the Bayou Vermilion, together with all the buildings and improvements thereon situated or thereto appertaining.

2nd. The undivided half of a certain tract of land situated in this parish on the west bank of the Bayou Vermilion, measuring one arpent front by forty arpents in depth, bounded north by Auguste Gallet, below by Bazile Saux and John Colomb, east by the Bayou Vermilion, and west by Sosthene Calatan.

And make due return *in* the manner in which you shall execute this writ.

Witness the Honorable C. De Baillon, judge of the said court, this 2nd day of May, A. D. 1889.

(Signed) GEO. W. SUMMERS,
D'y Clerk of Court.

343 *Procès Verbal of Sale.*

STATE OF LOUISIANA,
Parish of Vermilion.

Be it known that on this 3rd day of June, A. D. 1889, by virtue of a commission issued from the honorable 25th judicial district court of the State of Louisiana in and for the parish of Vermilion, in the matter of the succession of J. B. Cavailhez, and to me directed, authorizing and empowering me to sell at public auction, for cash, on the day of the sale, to pay debts, the interest in and to two certain tracts of land in said parish belonging to said succession, I, Alphonse L. Le Blanc, sheriff in and for the parish of Vermilion, did make said sale at the late residence of the deceased in said parish, and after having announced to the bystanders, in a loud and distinct voice, the terms and conditions of the sale, proceeded to adjudicate the property in the manner and form following, to wit:

Lot 1. The undivided half of a certain tract of land situated in this parish on the east bank of the Bayou Vermilion, measuring ten arpents front by forty arpents in depth, more or less, bounded above by Lucien S. Broussard, below by Emile Romero, east by Joseph Shoate, and west by Bayou Vermilion, together with all the buildings and improvements situated, consisting of one dwelling-house, kitchen and pantry, one barn and stables, one sugar-house and mill buildings, kettles, one steam-engine, one cotton-gin and building, four tenant houses, about 500 panels of fencing, adjudicated to Francois Chapuis for the price and sum of three thousand three hundred and seventy dollars, he being the last and highest bidder—$3,370.00.

(Signed) F. CHAPUIS.

Witnesses:
GEO. W. SUMMERS.
J. A. LEMAIRE.

344 2nd. The undivided one-half of a tract of land situated in this parish on the west bank of the Bayou Vermilion, measuring one arpent front by forty arpents in depth, bounded north by Auguste Gallet, below by Baxile Saux and John Colomb, east by Bayou Vermilion, and west by Sosthene Calatan, adjudicated to Francois Chapuis for the price and sum of one hundred and fifty dollars, he being the last and highest bidder—$150.00.

(Signed) F. CHAPUIS.

Witnesses:
GEO. W. SUMMERS.
J. A. LEMAIRE.

There being no other property known or shown to me for sale, I have closed the present procès verbal, amounting to three thousand five hundred and twenty dollars, and have signed these presents in

presence of Messrs. George W. Summers and J. Adonis Lemaire, competent witnesses hereto subscribed.

(Signed) A. L. LE BLANC, *Sheriff.*

Witnesses:
GEO. W. SUMMERS,
J. A. LEMAIRE.

Filed June 4th, 1889.

(Signed) GEO. W. SUMMERS,
D'y Clerk of Court.

Recorded in vol. 6 of Conveyances, No. 3312, page 434, June 5th, 1889.

(Signed) GEO. W. SUMMERS,
D'y Clerk and Recorder.

Petition, Provisional Account, and Order for Pub.

25th Judicial District Court, Parish of Vermilion.

Succession of JEAN B. CAVAILHEZ. No. —.

To the honorable the judge of said court:

345 The petition of Armand Moulor, administrator herein, with respect represents:

That he has prepared and herewith presents and files a provisional account of his administrations of the above numbered and entitled succession, showing the assets realized from the sale of the property under an order of court herein heretofore rendered as well as a tabulated statement of privileged debts, as will be apparent from said account, annexed hereto as part thereof.

Wherefore petitioner presents and files said account and prays that notice of said filing be given by publication according to law, and, after due delays and legal proceedings, that said account be homologated and the funds ordered to be distributed in accordance therewith, and for all orders and decrees necessary, and for general relief.

(Signed) LEONARD, MARKS & BRUENN,
MARTIN VOORHIES, *Of Counsel.*

Assets.

Gross proceeds of sale of one undivided half of plantation in Vermilion parish and one undivided half of a certain lot on Bayou Vermilion..... $3,520.00

Liabilities.

Privileged:

Clerk of court, for costs to date...	$10.95
Sheriff's costs and charges to date...	37.60
Advertisement for sale, &c.....	12.00
Lastie Broussard, for taking inventory..... .	8.00

Armand Moulor, commissions, administrator, based on appraised value, as inventoried herein, of the properties sold and 2½ %.....	84.25	
Leonard, Marks & Bruenn & Martin Voorhies, for professional services as attorneys.....	250.00	
Reserved for future costs.....	50.00	
346 Total privileged debts.....		452.80
Balance of.....		$3,067.20

Mortgage Liability.

A judgment for $5,310.00, with legal interest from judicial demand, in favor of Mr. Jean B. Cavailhez, widow J. B. Cavailhez, who has since deceased and who is now represented by her testamentary legatee, Mr. Francois Chapuis, now the owner and holder of said judgment claim, and which said judgment, is recorded, is — judicial mortgage, and also appear as importing and recognizing the said wife's legal mortgage and privilege upon the estate of said J. B. Cavailhez.

Order.

Let the within provisional account of Armand Moulor, administrator of the succession of Jean Baptiste Cavailhez, be advertised as within prayed for, according to law.

Given at chambers, Lafayette, Louisiana, this 5th day of July, A. D. 1889.

(Signed) C. DE BAILLON,
Judge 25th Judicial District, La.

Filed July 5th, 1889.
(Signed) GEO. W. SUMMERS, *D'y Clerk.*

Petition and Order to Homologate Provisional Account.

STATE OF LOUISIANA:

25th Judicial District Court, Parish of Vermilion.

Succession of JEAN BAPTISTE CAVAILHEZ. No. 88.

To the honorable the judge of said court:

The petition of Armand Moulor, herein duly appointed and qualified administrator, respectfully represents:

347 That due and legal advertisement has been made of petitioner's provisional account herein filed on the — day of July, 1889.

That more than ten days, required by law, have elapsed, and an opposition has been filed to the several and various items on said account, as aforesaid.

Wherefore petitioner prays that his said provisional account so filed on the — day of July, 1889, be approved and homologated

and the funds ordered to be distributed in accordance therein, and for general relief.

(Signed) LEONARD, MARKS & BRUENN,
Of Counsel.

PARISH OF VERMILION, }
State of Louisiana. }

On reading the above and foregoing petition, and after considering the proofs of advertisement and the affidavit to the effect that no opposition to the provisional account of Armand Moulor — benefitted, considering the law in such case made and provided—

It is ordered and decreed that the provisional account herein filed by Armand Moulor, administrator, on July —, 1889, — approved and homologated and the funds distributed in accordance therewith, all as provided for by and according to law.

Judgment.

25th Judicial District Court, Parish of Vermilion.

Succession of JEAN BAPTISTE CAVALHEZ. No. 88.

In the Matter of the Opposition of GERAC BROTHERS to the Tableau of ARMAND MOULOR, Administrator.

348 In this case the law and the evidence being in favor of said administrator and against said opponents, Gerac Brothers—

It is ordered, adjudged, and decreed that said opposition and demand, as set forth therein, be and is rejected, and said tableau is fully and finally homologated and approved.

It is further ordered that opponents pay costs.

Thus done, read, and signed in open court, at Abbeville, La., on this 16th day of January, A. D. 1890.

(Signed) CHAS. D. CAFFERY,
Judge ad Hoc.

Filed January 16th, 1890.
(Signed) GEO. W. SUMMERS, *D'y Clerk.*

STATE OF LOUISIANA, }
Parish of Vermilion. }

I do hereby certify that the above and foregoing are true and correct copies of all the proceedings had relating to the administration of the succession of Jean Baptiste Cavailhez, No. 88 of the probate docket of the district court in and for the parish of Vermilion.

Witness my official signature this 20th day of July, A. D. 1893.

GEO. W. SUMMERS,
D'y Clerk of Court.

[SEAL.]

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

51.

Petition in Suit No. 119.

349 To the honorable the judge of the 25th judicial district court in and for the parish of Vermilion, La.:

The petition of the commercial firm of Gerac Brothers, of the parish of Lafayette, La., composed of Jean Gerac and Pierre Gerac, residents of the said parish of Lafayette, with respect represents:

That in the early part of the present year, 1886, petitioners furnished and delivered on a certain plantation, commonly known as the "Remick plantation," certain lumber and building materials which were used in the construction of valuable improvements and repairs on said plantation.

That petitioners also paid Jean Brun and John S. Rand the amounts due them for carpenter work done by them respectively in making said improvements and repairs on said plantation, a detailed statement showing the amount and price of lumber so furnished and the carpenter bills so paid by the petitioners, amounting in the aggregate to the sum of eight hundred and thirty-one 15/100 dollars, together with receipts and affidavit- thereto attached, being hereto annexed for reference and made part thereof.

That petitioners furnished said lumber and paid said workmen's claims at the request of Laurent Lacassagne, who was at the time in possession of said plantation.

That petitioners have received nothing on account for said claims, and that the said sum of eight hundred and thirty-one 15/100 dollars, as set forth in said annexed statement, is due them by said plantation and is secured by a privilege thereon, petitioners having caused their said claim to be duly recorded in the manner required by law in the office of records of mortgage of Vermilion parish for the purpose of presenting their said privilege, being the privilege accorded by law for building materials furnished and for wages of workmen.

350 That said plantation is situated in the parish of Vermilion and is bounded north by lands of Lucien S. Broussard, east by the public road, south by property of Emile Romero, and west by the Bayou Vermilion, and measures ten arpents front on said bayou by forty arpents deep.

Petitioners represent that said Laurent Lacassagne was evicted from said plantation on or about the — day of ——, 1886, and that one Felix Brullard is now and has been in possession thereof and in the enjoyment of said improvements for himself or others since said eviction.

The premises considered, petitioners pray that said Felix Brullard, as possessor of said Remick plantation, be duly cited to answer this demand, and that after due proceedings are had there be judgment in favor of petitioners for the sum of eight hundred and thirty-one 15/100 dollars, with five per cent. per annum interest thereon from judicial demand against said plantation, with recognition of the privilege thereon accorded them by law, and also

ordering the seizure and sale of said plantation in satisfaction of said judgment.

And they pray for costs and for general relief, etc.

O'BRYAN & WHITE,
Att'ys for Petitioners.

Filed Oct. 21st, 1886.

LASTIE BROUSSARD, *Clerk.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

Received statement of account sued on — this case.

R. P. O'BRYAN,
Att'y for Gerac Brothers.

Aug. 7th, 1887.

351 STATE OF LOUISIANA, }
Parish of Vermilion. }

Before the undersigned authority personally came and appeared Pierre Gerac, one of the firm of Gerac Brothers, who, having been duly sworn, declares that this amount is justly due the said firm; that the lumber was duly furnished for and upon the Remick plantation for buildings and repairs upon said plantation, and that the claims of Brun & Rand, whose receipts are annexed here for service, —endorsed on said place and paid by said firm. Wherefore the said firm of Gerac Brothers claims this amount, with the privilege rendered by law on the said Remick plantation, situated in the parish of Vermilion, on the Bayou Vermilion, and bounded above by Lucien S. Broussard, and below by Emile Romero, east by the public road, and west by the Bayou Vermilion, and measuring ten arpents front by forty deep.

P. GERAC.

Sworn to and subscribed before me this 21st day of June, A. D. 1886.

LASTIE BROUSSARD,
Clerk and Recorder.

Recorded in vol. 1 of Mortgages, page 454, No. 386, June 21st, 1886.

[SEAL.] ALCIDE LE BLANC,
D'y Clerk and Recorder.

PERRY'S BRIDGE, *Oct. 21st*, 1886.

Mr. Lastie Broussard.

DEAR SIR: I am security for costs in the suit of Gerac Brothers against Remick Plantation, to be brought by Messrs. O'Bryan & White, attorneys.

Yours, &c., JOHN NUGIER.

Filed Oct. 21st, 1886.

LASTIE BROUSSARD, *Clerk.*

Filed Dec. 15, '97.

JOS. G. LE BLANC,
D'y Clerk of Court.

352 52.

Peremptory Exception in Suit No. 119.

25th Judicial District Court, Parish of Vermilion.

GERAC BROTHERS
vs. } No. 119.
REMICK PLANTATION.

Francois Chapuis, executor of the last will and testament of Jeanne C. Cave, widow of Bte. Cavailhez, *at* a peremptory exception to plaintiff's actions avers that the original and supplemental petition filed by plaintiff discloses no cause of action.

Wherefore *they* pray- that the said demand be dismissed.

MARKS, LEONARD & BRUENN & SMEDES & WHITE, *Att'ys.*

Filed Sept. 20th, 1887.
O. H. O'BRYAN, *D'y Clerk.*

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

53.

Judgment in Suit No. 119.

District Court, Vermilion Parish.

GERAC BROTHERS
vs. } No. 119.
REMICK'S PLANTATION.

In this case, defendants having filed a peremptory exception of no cause of action and the same coming up for trial and the law and the evidence being in favor of the defendants—

353 It is ordered, adjudged, and decreed that their exception be maintained and the demand of Gerac Brothers be, and the same is hereby, dismissed at their costs as in the case of nonsuit.

Thus done, read, and signed in open court this 27th day of September, A. D. 1887.

C. DE BAILLON,
Judge 25th Judicial District, La.

Filed September 27th, 1887.
O. H. O'BRYAN, *D'y Clerk.*

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

54.

Petition in Suit No. 105.

To the honorable the judge of the 25th judicial district court, holding session in and for the parish of Vermilion, State of Louisiana:

The petition of Laurent Lacassagne, a resident of the city of New Orleans, parish of Orleans, with respect shows:

That Emile Romero, a resident of the parish of Vermilion, is justly and truly indebted unto him in the full sum of two hundred and twenty-six 60/100 dollars, with five per cent. per annum interest thereon from March 1st, 1886, until payment, for this, that some time during the month of September or October, 1885, your petitioner, together with one Albert G. Maxwell, of Vermilion parish, by virtue of a sheriff's sale, *are* the owners and possessors of a certain plantation situated in said parish, seized and sold at the suit of said A. G. Maxwell *vs.* Marceline Cavailhez, widow
354 Clarke H. Remick; that at said time or a short time afterward they made and entered into an agreement with said Emile Romero wherein they leased to him the use of the steam gin on said plantation at the price of sixty cents per bale for every bale of cotton he, the said Romero, would gin at said place, Romero to pay one half the premium for insurance on said gin property, the proportion falling due thereon by said Romero amounting to the sum of thirty dollars and the ginning at one hundred and ninety-six 60/100 dollars, he having ginned three hundred and twenty bales of cotton.

Petitioner shows that a short time after entering into said agreement he purchased the interest of said A. G. Maxwell in and to said plantation, and that he is now the owner thereof and of the claim against said Romero on account of said ginning and for the insurance premium advanced for him.

Petitioner avers amicable demand, and that his claim, though long since due, remains unpaid, said Romero refusing to pay the same or any part thereof.

Wherefore petitioner prays that the said Emile Romero be duly cited to answer this demand, and after due hearing he have judgment against him in the sum of two hundred and twenty 60/100 dollars, with five per cent. interest thereon from March 1st, 1886, until payment. He prays for costs and for general relief, &c., &c.

The words "or a short time thereafter" and the words "costs, &c.," interlined and appeared before filing.

O'BRYAN & WHITE, *Att'ys.*

Filed Aug. 31st, 1886.
O. H. O'BRYAN, *D'y Clerk.*

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

355 55.

Defendant's Answer in Suit No. 105.

To the honorable the judge of the 25th judicial district court in and for the parish of Vermilion, State of Louisiana:

Now into court comes defendant, through undersigned counsel, who, for answer to plaintiff's demand, denies all and singular the allegations therein contained, except that which is hereinafter admitted.

Defendant admits having leased said steam-engine on said plantation from said plaintiff *belonging* at the time that said property legally belonged to said plaintiffs, and admits having ginned three hundred and twenty bales of cotton; and, further answering, avers that before the expiration of said lease, on the 5th day of February, 1886, the said plaintiff, Laurent Lacassagne, and his employees, laborers, were all evicted from said plantation by virtue of a judgment writ issued from the United States circuit court, fifth circuit, directed to one Sam. Price, deputy United States marshal, ordering and commanding him, the said marshal, to eject the parties who might be holding said property described in plaintiff's petition, either by public or private deeds of transfer or otherwise, and to place Mrs. Jeanne Caroline Cave, widow Baptiste Cavailhez, in full possession of the aforesaid-described property, a copy of which judgment and order is hereunto annexed for reference; and your defendant further avers that he was also *evicted*, by order of the United States marshal, Sam. Price, to desist from further ginning and ordered to pay over to Mrs. Jeanne Caroline Cave, widow Baptiste Cavailhez, or other duly authorized or appointed agent, Mr. Felix Brullard, the full amount of rent of said gin. Defendant avers that at that date, February 5th, 1886, he had in said gin a great quantity of seed cotton to gin for divers persons, and was only
356 allowed to resume his ginning operations by paying the amount of rent as demanded and ordered by the deputy United States marshal, which your defendant did by paying the amount of said rent, $196.60, as ordered, to Mr. Felix Brullard, agent aforesaid, under and by virtue of the order of the deputy United States marshal, Sam. Price.

Defendant further avers that the said Laurent Lacassagne is indebted unto him in the full sum of seventy-four and 91/100 dollars for divers goods, wares furnished his employees, and also provisions furnished through his order to his employees, and for hauling lumber, rent of oxen and cart, ginning and bagging, all of which will more fully appear by reference to annexed detailed account hereunto annexed, which amount of seventy-four 91/100 dollars he pleads in reconvention and asks for judgment for aforesaid amount of seventy-four and 91/100 dollars, with legal interest from January, 1886, until paid.

Wherefore he prays that plaintiff's demand be rejected, and that he do have judgment in reconvention against said plaintiff and re-

cover of him the sum of seventy-four and 91/100 dollars, with legal interest from January, 1886, until paid.

And for general relief, and as in duty bound, &c.

JOS. A. CHARGOIS, *Att'y.*

Filed September 13th, 1886.
O. H. O'BRYAN, *D'y Clerk.*

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

357 56.

Judgment of District Court in Suit No. 105.

STATE OF LOUISIANA:

District Court, Parish of Vermilion.

L. LACASSAGNE
vs.
EMILE ROMERO. } No. 105.

The above entitled and numbered cause having been regularly tried by reason of the law and the evidence being in favor of plaintiff and against the defendant—

It is ordered, adjudged, and decreed that Laurent Lacassagne, plaintiff, do have judgment on his demand against the defendant in the sum of one hundred and sixty-three 80/100 dollars, with five per cent. per annum interest thereon from March 1st, 1886, until paid.

And by reason of the law and the evidence being in favor of Emile Romero, on his reconventional demand, and against said Laurent Lacassagne—

It is ordered, adjudged, and decreed that there be judgment in favor of said Emile Romero, against said Lacassagne, in the sum of sixty-two dollars in reconvention.

Plaintiff's demand for insurance is dismissed as in case of non-suit.

It is further decreed that Emile Romero pay all costs of this suit.

Thus done, read, and signed in open court, at Abbeville, on this 23rd day of April, A. D. 1887.

C. — BAILLON,
Judge 25th Judicial District Court.

Filed April 23rd, 1887.
O. H. O'BRYAN, *D'y Clerk.*

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

358 57.

Answer to Appeal in Circuit Court in Suit No. 105.

LAURENT LACASSAGNE
vs.
EMILE ROMERO. } No. 105.

An appeal before the circuit court of appeals for the third circuit of the State of Louisiana.

Now into court comes L. Lacassagne plaintiff and appellee, in said cause.

And, for answer to the appeal herein taken, avers that the judgment of the district court is erroneous in allowing judgment for defendant on his reconventional demand.

Wherefore he prays that the judgment of the district court be amended by striking therefrom the amount allowed on defendant's reconventional demand, and that as thus amended said judgment be affirmed.

And he prays for general relief, &c., &c.

O'BRYAN & WHITE,
Att'ys for Plaintiff and Appellee.

Filed Oct. 26th, 1887.
LASTIE BROUSSARD, *Clerk.*

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

58.

Judgment of Circuit Court in Suit No. 105.

Court of Appeals, 3rd Circuit.

LAURENT LACASSAGNE
vs.
EMILE ROMERO. } Appealed from Parish of Vermilion.

359 The plaintiff in this case sues the defendant on a contract of lease for the rent of a steam-gin which he leased to defendant in 1886 for the purpose of ginning cotton. The rent stipulated between the parties was sixty cents per bale for all cotton ginned by defendant, and it was further stipulated that defendant should pay one-half of the premium for insurance on the gin, which it is alleged by plaintiff amounted to thirty dollars.

The defendant, in his answer to plaintiff's petition, denied all and singular the allegations thereof excepting such as he admitted. He admits the lease of the gin from plaintiff under the belief that it belonged to him at the time. He furthermore admits that he had ginned three hundred and twenty bales of cotton, but he avers

that before the expiration of the lease, on the 5th of February, 1886, plaintiff and his employees, laborers on the plantation on which the gin is located, were evicted therefrom by virtue of a judgment and writ issued from the United States circuit court, fifth circuit of Louisiana, directed to the deputy marshal, ordering and commanding him to eject all parties who might be holding possession of the described property, described in plaintiff's petition, viz., the plantation on which said steam-gin house was situated, either by public or private deeds of transfer or otherwise, and to place Mrs. Jeanne Caroline Cave, widow of Baptiste Cavailhez, in full possession thereof. Defendant further avers in his answer that he was also evicted and ordered by the said marshal to desist from further ginning and to pay over to said Mrs. Cave, widow, or her duly appointed and authorized agent, Felix Brullard, the full amount of rent due for the use of said gin; that at the time he had in said gin a great quantity of cotton in the seed to gin for divers persons and was only allowed to resume his ginning operations by paying the amount of rent as ordered by the deputy U. S. marshal, which he did, paying $196.60 to Mr. Felix Brullard or agent of Cave aforesaid. He further avers that plaintiff was indebted
360 to him in the sum of seventy-four 91/100 dollars for goods, merchandise furnished to the employees of said plaintiff and also for provisions to said employees furnished through his orders and for services rendered, etc.

And he prays for judgment in reconvention for said sum against plaintiff. There was judgment after the trial in the court below for $168.80, with 5% per annum interest from March 1st, 1886, until paid, in favor of plaintiff *vs.* defendant and for defendant on his reconventional demand against plaintiff for $62.57, and dismissing plaintiff's demand for premium on insurance as in case of nonsuit. Defendant was condemned to pay all costs of suit. Defendant appeals. Plaintiff in his answer here asks for an amendment of the judgment rejecting demand in reconvention. There are several bills of exception taken by both plaintiff and defendant to the ruling of the court, *no* objections raised by them, respectively, to evidence offered on the trial, but as they are not urged upon us, and from the view we have taken of the case we do not consider it necessary to do so, we shall not notice them.

The facts that we find established by the evidence adduced on the trial in the lower court are substantially these, viz: That the plaintiff was the purchaser of the plantation on which the steam-gin which is in question was situated; that it was purchased by him and another, whose interest therein was subsequently transferred to him at a sheriff's sale made in execution of a final judgment obtained by plaintiff *vs.* defendant in the suit of Maxwell *vs.* Remick; that pending a suit by Mrs. Cave, widow, *et als.*, in U. S. circuit court to have a sale of said property made to the defendants by Baptiste Cavailhez and Ernestine Diaz to Clark H. Remick avoided and annulled, the plaintiff, as owner thereof, leased the gin to defendant in this suit; that before the termination of the lease afore-

said a judgment was rendered by the United States circuit
361 court in said suit of Cave, widow, *vs.* Cavailhez *et als.*, decreeing the sale to Remick to be void and annulling it, and that said plaintiff, Mrs. Cave, was the owner thereof.

That thereupon a writ of possession issued from said court, ordering the U. S. marshal for the western district of Louisiana, or any of his deputies, to eject from said premises, the property aforesaid, the defendant in said suit and those who may be holding said property under said defendant by private deed of transfer or otherwise, &c., and to put the plaintiff in said suit in full possession thereof. We find that the evidence shows that the defendant in this suit and all others there in possession of the property were evicted therefrom, and that the property was placed by the marshal in the possession and under the control of a keeper, the agent of Mrs. Cave; that defendant was compelled to enter into a new agreement with the latter before he could proceed with his ginning operations on the leased gin, and to pay, by the order of said deputy marshal, to said keeper and agent all the rent that was due by him on the lease thereof from plaintiff.

The defendant's contention is that he has been evicted from the premises leased him by plaintiff, by process of law, at the instance of one who is decreed to be by a competent court the lawful owner thereof; that hence, owing to plaintiff's failure to cause him to be in peaceful possession of the steam-gin during the continuance of the lease, as well as his failure to make good his (plaintiff's) guarantee against all defects and vices of the leased premises which may prevent the use thereof under the lease by defendant, &c., he, the defendant, is unleased from all obligation to pay rent to plaintiff.

The plaintiff contends that in this proceeding the defendant cannot gainsay or dispute plaintiff's title to the property leased, and cannot set up any eviction by the true owner thereof.

362 This proposition is correct, but only where the defendant or lessee is in peaceable and undisturbed possession of the leased premises under the lease.

See 8 R., 211; 37 A., 732.

The article 2676 of the C. C. makes it obligatory on the lessor to cause the lessee to be and remain in peaceable possession of the thing leased during the continuance of the lease. According to article 2695, he guarantees the lessee against all the vices and defects of the thing which may prevent its being used under the lease, and though he knew nothing of such vice and defects at the time of the lease, and even if they have arisen since, provided they do not arise from the fault of the lessee, &c., the vice or defect of which the defendant complains in this case is one of title. The defendant has a right to complain of it and to show it, because he has been disturbed in the peaceable possession of the property, indeed, has been ejected from the possession thereof by one holding the true title by due process of law. See authorities cited above. The lease was dissolved by the judgment of and writ of possession

issuing from the U. S. circuit court, and the plaintiff in this suit, wherein that judgment was rendered, recognizing her to have been the owner of the property, even before the lease was made, had her election to make it her own contract with lessee's consent or to repudiate it and demand immediate possession of the leased premises. See 14 A., page 48. And she has done so. We now come to consider the reconventional demand of defendant.

We find that the evidence justified the judge below in rendering judgment in favor of defendant in this demand. The sum of $12.40, amount of item charges for Rand's account, we think was properly deducted from the demand for the reason given by the judge *a quo*.

But we think that a further deduction should have been made from the defendant's reconventional demand, as the value of
363 the five thousand pounds of cotton seed belonging to plaintiff taken by defendant. It is true that the plaintiff, in his petition, does not demand this debt, but defendant's own testimony, admitted without objection, shows that he had received the seed, and had not accounted to plaintiff for it, and we feel justified in considering the question as one properly before us in this suit. 1 N. S., 456; 6 N. S., 86; 1 La., 301; 18 La., 321; 9 A., 256.

We think that plaintiff's right to value of the seed, viz., $25.00, has been established by defendant's testimony and fixed the value thereof at $30.00 per ton. We are of opinion that the court *a quo* erred in rendering judgment in favor of plaintiff for the rent; his demand, therefore, should have been rejected.

It is therefore ordered that the judgment of the court *a quo* be so amended as to reject and dismiss the plaintiff's demand against defendant for rent and to reduce the amount allowed defendant on his reconventional demand to $37.67. It is further ordered that plaintiff pay the costs in both courts; that, as thus amended *amended*, said judgment be affirmed.

JOSEPH M. MOORE,
JOHN CLEGG,
Judges Court of Appeals.

Filed Oct. 27th, 1887.
[SEAL.] LASTIE BROUSSARD, *Clerk.*

Recorded in vol. 1 of Decisions of Supreme Court and Court of Appeals, Oct. 29th, 1889, *and* page 20.

O. H. O'BRYAN, *D'y Clerk.*

Filed Dec. 15, '97.
JOS. G. LE BLANC,
D'y Clerk of Court.

59.

Reasons of Judge ad Hoc for Judgment in the Suit of—

364 LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON & F. CHAPUIS.

This is a suit wherein Laurent Lacassagne, plaintiff, seeks to restrain the sheriff of Vermilion parish, La., and H. Abraham & Son and F. Chapuis from selling a plantation, &c. For further description of this writ, see reasons for judgment on the plea of *res adjudicata* by my predecessor, and there the State supreme court of Louisiana decided that article 2453 of the Revised Civil Code of Louisiana of 1870 did not apply to a sale made under foreclosure proceedings against a party defendant in a suit pending at the time of the sale. Now, the Supreme Court of the United States decided that said article 2453 did apply to this identical sale. (See Lacassagne *vs.* F. Chapuis, testamentary executor, No. 188, October term of 1891.) This case is appealable to the United States Supreme Court from the supreme court of Louisiana, and is appealable to the supreme court of Louisiana *and* from this court. If this court decides the sale of the property in dispute to L. Lacassagne to be null and void, it finds itself supported by the plain letter and by equity as well as by the Supreme Court of the United States. If, on the other hand, it decrees the aforesaid sale to be a valid sale, it only finds an interlocutory judgment of the State supreme court of Louisiana, which judgment the said very honorable court may, on an appeal from this judgment of ours, reverse. We have always respected the opinions and the judgments of our honorable State supreme court, and were not this case appealable to a higher court we would submit to the aforesaid opinion of our superior, but when we feel convinced that our own superior court will be reversed by the honorable Supreme Court of the United States on a writ of error to the State supreme court, it becomes our duty
365 to render a judgment in accordance with the plain letter of article number 2453 of the Revised Civil Code of Louisiana, and to decree that the sale of the property in dispute to L. Lacassagne by the sheriff of Vermilion parish, Louisiana, under the foreclosure proceedings before this court of Maxwell *vs.* Widow C. H. Remick, *and* is null and void, because it was made during the pendency of the suit of J. B. Cavailhez *vs.* Mrs. C. H. Remick before the U. S. circuit court for the western district of Louisiana, in direct violation of article 2453 of the R. C. C. of La., 1870. Opinion of the U. S. Supreme Court in L. Lacassagne *vs.* Francois Chapuis, ex. This court considers that in so doing it is far more equitable than if it contained the validity of the sale aforesaid, for if the creditor has the right to execute his mortgage when it is due the third possessor certainly has the right to pay the mortgage up to the day of sale. Now, if the creditor, Maxwell, had waited to foreclose until after the final judgment was rendered in the suit of Cave *vs.* Widow C.

H. Remick, he would have lost none of his rights as creditor. The title to the land mortgaged being quieted, the land certainly would have brought more if sold at auction, and the debtor as well as Chapuis or Cave would have been benefitted. Again, can the honorable court say that the successful wife would not have found means to pay this mortgage, and thus save the property? We say, therefore, that this decree of ours is just and equitable. Now, as all the defendants and intervenors seem to have joined in revising the claims of Lacassagne and in not fighting against each other, and as F. Chapuis, executor of J. C. Cave, deceased, has intervened in 1893 without pleading want of proper parties, we consider this plea waived. There is also considerable bother about the acts of Chapuis as executor and his acts as purchaser under the sale
366 of Moulor, administrator of J. B. Cavailhez. This court knows of no law and the learned counsel for Chapuis cited no law or decision whereby the court which has jurisdiction of the succession of the wife must also take jurisdiction of the succession of the husband, who died in another parish, so we conclude that this court had jurisdiction of the succession of J. B. Cavailhez, and that the sale to Chapuis of an undivided half of the land in dispute is valid.

It is a well-settled principle of law that the court where a man dies and where he has his principal establishment has sole jurisdiction of his succession. R. C. C., article 935; 26 An., 269. There is also an attack by Lacassagne on the judgment known as the Boarman judgment, because it is alleged that Mrs. J. B. Cavailhez was a naturalized citizen of the State of Louisiana, and that Mrs. Cave, his wife, was also, and for this reason that the U. S. court had no jurisdiction; that is very true, if she had lived in Louisiana all the time after his death up to the filing of this suit, but there is no proof that she has not lived in France more than two years after his death and before filing the suit in the United States court, and if she did she would have lost her domicile here. 32 An.,—. When the judgment of another court is attacked the proof of the want of jurisdiction in the court which rendered it should be clear and conclusive. It is not so in this case. Taking the evidence, pleading, and the law into serious consideration and without any idea or thought of overruling any other court, this court decrees in this case that the sale under which L. Lacassagne claims is null and void because made in violation of R. C. C., article 2453.

2nd. That for this reason the injunction herein sued out is hereby dissolved at plaintiff's costs, reserving to plaintiff in injunction all the rights she may have under the Maxwell mortgage.

367 3rd. That the sale of the succession of J. B. Cavailhez, deceased, to F. Chapuis is valid for undivided half of the property in dispute.

4th. That the rights of H. Abraham & Son on said undivided half or mortgage are hereby recognized.

5th. That the claims of the succession of J. C. Cave are restrained to the other half.

6th. That the claims of Mrs. C. H. Remick against the succession

of her father are referred to the proceedings of the sale of his succession.

7th. That the costs of injunction be paid by plaintiff; the costs of intervention, one half by Chapuis, ex., and half by H. Abraham & Son.

Filed April 5, '98.

JOS. G. LE BLANC,
Dy Clerk of Court.

60.

Judgment in this Suit.

STATE OF LOUISIANA:

District Court, Parish of Vermilion.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET AL. } No. 570.

On trial of the above numbered and entitled cause, by reason of the law and the evidence being against the plaintiff—

It is ordered, adjudged, and decreed that the demand of the said plaintiff, Laurent Lacassagne, herein represented by the administratrix of his succession, Marie L. Casey, be, and is hereby, rejected at his costs, reserving to his estate, however, whatever mort-
368 gage rights it may have under the mortgage granted in favor of A. G. Maxwell on the plantation described in plaintiff's petition.

And the law and the evidence being in favor of defendants:

It is ordered, adjudged, and decreed that the sale of the said plantation under said Maxwell mortgage pending the suit of Jeanne Caroline Cave *vs.* Marceline Cavailhez, before the U. S. 5th circuit court of the western district of Louisiana, be, and is hereby, declared null and void.

And the law and the evidence being in favor of H. Abraham & Son and Jake H. Abraham, adm'r of the succession of Francois Chapuis, it is decreed that the undivided one-half interest of said plantation from the succession of Jean Bte. Cavailhez to said Francois Chapuis, made on the third day of June, 1889, be, and is hereby, recognized and maintained.

It is further decreed that the mortgages executed by said F. Chapuis in favor of said H. Abraham & Son be, and is hereby, recognized as bearing upon and affecting said undivided half interest in said plantation, and that the seizure made by said H. Abraham & Son under the judgment obtained by them against said Chapuis under their said mortgages be, and is hereby, maintained.

It is further decreed that the remaining half interest of said plantation belongs to the community that existed between Jean Bte. Cavailhez and his wife, Jeanne Caroline Cave, and the claims of said Jeanne Caroline Cave and the intervenor, Marceline Cavailhez, are referred to the settlement of said community.

It is also decreed that the costs of the injunction and proceedings thereunder in this suit be paid by the plaintiff, and that the costs of the intervention be paid one-half by H. Abraham & Son and the other half by Chapuis, executor.

369 Thus done, read, and signed in open court, at Abbeville, La., on this 30th day of April, 1898.

L. L. BOURGES,
Judge ad Hoc 17th Judicial District Court.

Filed April 30th, 1898.

JOS. G. LE BLANC,
D'y Clerk of Court.

61.

Extract Minutes of Court.

TUESDAY, *April 5th*, 1898.

Court opened pursuant to adjournment.

Present: His honor Conrad De Baillon, judge presiding; L. L. Bourges, judge *ad hoc* presiding.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON, FRANCOIS CHAPUIS. } No. 570.

Judgment for defendant dissolving the injunction and rejecting plaintiff's demand at his costs, reserving to plaintiff all the rights he may have under the Maxwell mortgage; that the sale by the succession of J. B. Cavailhez to F. Chapuis is valid for an undivided half of the plantation in dispute; that the rights of H. Abraham & Son in said undivided half as mortgagees are duly recognized; that the claims of the succession of J. C. Cave are restrained to the other half; that the claim of Mrs. C. H. Remick against the succession of her father *are* referred to the proceeds of the sale; that the costs of the injunction are to be paid by plaintiff; the costs of intervention, one-half by Chapuis, executor, and the other half by

370 H. Abraham & Son. See decree.

Court then adjourned till tomorrow, at 10 o'clock a. m.

(Signed) C. DE BAILLON,
Judge 17th Judicial District Court.

I hereby certify the above and foregoing to be a true and correct extract taken from the minutes of court.

This 25th day of October, 1898.

JOS. G. LE BLANC,
D'y Clerk of Court.

62.

Petition of Marie L. Casey for Appeal in This Suit.

In the District Court, Parish of Vermilion.

L. LACASSAGNE
vs.
ABRAHAM & SON ET AL. } No. —.

The petition of Marie L. Casey, administratrix of the estate of L. Lacassagne, plaintiff herein, with respect represents:

That there is an error to her prejudice in the judgment herein rendered and signed, dismissing plaintiff's action upon the trial upon the merits, and that she is desirous of appealing therefrom to the honorable the supreme court of Louisiana.

Wherefore she prays that an appeal be allowed her, returnable on the first day of the next term of the supreme court of Louisiana, upon her giving bond, conditioned according to law, in such
371 sum as the court may seem proper, and that all parties in interest be cited to answer said appeal; and she prays for all further orders requisite in the premises.

W. S. BENEDICT &
DON CAFFERY & SON, *Attorneys.*

63.

Order of Appeal Annexed to Petition No. 62.

Order.

Let an appeal be allowed plaintiff herein, returnable to the honorable the supreme court of Louisiana on the first day of its next term, on her giving bond, conditioned according to law, in the sum of two hundred dollars, and let all parties in interest be cited to appear and answer said appeal.

L. L. BOURGES,
Judge ad Hoc 17th Judicial District Court.

Filed, Abbeville, October 8th, 1898.
ALCIDE LE BLANC,
Clerk of Court.

64.

Agreement of Counsels Regarding Transcript Herein.

District Court, Parish of Vermilion.

L. LACASSAGNE
vs.
ABRAHAM & SON ET AL. } No. —.

It is agreed herein that the transcript of appeal now being made by the clerk shall commence with the proceedings had from and after

the decree of the supreme court rendered in this cause, and that there may be omitted therefrom all pleadings, documents, and evidence embraced in the appeal heretofore taken and now of record in the files of the supreme court of Louisiana under the number
372 11970 of the docket, and this shall be full authority to the clerk therefor.

September 27th, 1898.

ALBERT VOORHIES, *Att'y.*
DON CAFFERY & SON, *Att'ys.*
W. S. BENEDICT, *Att'y.*
W. A. WHITE, *Att'y.*

Filed Oct. 8, '98.
JOS. G. LE BLANC,
D'y Clerk of Court.

65.

Bond of Appeal in This Case.

STATE OF LOUISIANA:

Judicial District Court, Parish of Vermilion.

LAURENT LACASSAGNE } No. —.
vs.
ABRAHAM & SON ET AL.

Know all men by these presents that we, Marie L. Casey, administratrix of the estate of L. Lacassagne, as principal, of the parish of Orleans, and Lastie Broussard, as surety, of the parish of Vermilion aforesaid, are held and firmly bound *in solido* unto Alcide Le Blanc, clerk of the district court in and for the parish of Vermilion aforesaid, in the just and full sum of two hundred dollars ($200), lawful money of the United States of America, and for the faithful payment of which sum, well and truly to be made, we bind ourselves firmly by these presents.

Dated at Abbeville, La., this eighth (8th) day of October, A. D. 1898.

The condition of the foregoing obligation is such that—
373 Whereas the said above bounden estate of Laurent Lacassagne has taken an appeal to the supreme court of this State to be held at New Orleans on the 7th day of November, A. D. 1898, from a certain judgment rendered against it in the suit entitled and numbered as above:

Now, therefore, if the said appellant shall prosecute his said appeal and shall satisfy whatever judgment which may be rendered against it by the appellate court or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in said appeal, then this obligation shall be null and void; otherwise the surety shall be liable in its place.

MARIE L. CASEY,
Administratrix Estate of L. Lacassagne,
By W. S. BENEDICT, *Att'y.*
LASTIE BROUSSARD.

Signed and acknowledged before me and filed on above date.

ALCIDE LE BLANC,
Clerk of Court.

Filed Oct. 8, '98.
ALCIDE LE BLANC,
Clerk of Court.

66.

Acceptance of Service of Petition for Appeal in This Case.

District Court, Parish of Vermilion.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET AL. } No. —.

I hereby accept service of the petition of appeal filed in
374 this case by Marie L. Casey, administratrix of the estate of Laurent Lacassagne, and of the date of appeal granted thereon, and I waive citation on same.

New Orleans, Oct. 22nd, 1898.

ALBERT VOORHIES,
W. J. FORMENTO,
W. A. WHITE,
Att'y for H. Abraham & Son and J. H. Abraham, Administrator.

Filed Oct. 23rd, 1898.
JOS. G. LE BLANC,
D'y Clerk of Court.

STATE OF LOUISIANA, }
Parish of Vermilion. }

I hereby certify that the above and foregoing from *the* pages 1 to 117 is a true and complete transcript of all proceedings had, documents filed, and evidence adduced on trial of this suit entitled Laurent Lacassagne *vs.* H. Abraham & Son and Francois Chapuis *et al.*, No. 570 of the docket of the 17th judicial district court for the parish of Vermilion, La., and which are filed on appeal before the supreme court of the State of Louisiana at its next session at New Orleans, on the second Monday of November, 1898.

Witness my official signature and seal of office this 3rd day of November, A. D. 1898.

(Signed) JOS. G. LE BLANC,
D'y Clerk District Court for Vermilion Parish, La.

375 *Proceedings Had in the Supreme Court of the State of Louisiana.*

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } No. 12966.

Transcript of appeal.

Filed November 10th, 1898.
(Signed) PAUL E. MORTIMER,
Deputy Clerk.

Answer to Appeal.

Supreme Court La.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } No. 12966.

Defendants H. Abraham & Son now come into court through counsel, and for answer to the appeal aver that the judgment of the lower court in this case recognized their mortgages as applying to an undivided half interest in the plantation in controversy. They aver that their mortgages bear upon the whole of said plantation, and that the judgment of the lower court is erroneous in not recognizing their mortgage rights upon the entire plantation, and should be corrected in this rspect.

Wherefore they pray that the judgment of the lower court be amended and corrected so as to recognize their mortgages as applying to the whole of said plantation, and as thus amended affirmed.

And they pray for general relief, &c., &c.
(Signed) W. A. WHITE, *Att'y.*

(Endorsed:) No. 12966. Supreme court. Laurent Lacassagne *et al. vs.* Clara Barbe. Answer and prayer to amend. Filed Dec'r 20, 1898. (Signed) T. McC. Hyman, clerk.

Continuance.

(Extract from Minutes.)

376 NEW ORLEANS, WEDNESDAY, *December 21st*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, associate justices.

Absent: Henry C. Miller, associate justice.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } No. 12966.

This case not having been reached today for want of time, the court ordered the same to be continued until tomorrow, Thursday, the 22nd instant.

Continuance.

(Extract from Minutes.)

NEW ORLEANS, THURSDAY, *December 22nd*, 1808.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } No. 12966.

This cause came on this day to be heard and was argued by counsel; Mr. William S. Benedict opened for the plaintiff and appellant; Mr. Walter Augustus White replied on behalf of Abraham & Son, defendants, appellees, followed by Mr. Albert Voorhies, of counsel for the succession of Widow J. C. Cave Cavailhez and the community existing between her and her deceased husband, J. B. Cavailhez, and Widow C. F. Remick, also defendants and appellees; and the usual hour for the adjournment of the court having arrived, the court ordered the cause to be continued until tomorrow, Friday, the 23rd day of December instant, at 11 o'clock a. m., for further argument.

377 *Cause Submitted.*

(Extract from Minutes.)

NEW ORLEANS, FRIDAY, *December 23rd*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } No. 12966.

The trial of this cause, continued from yesterday, Thursday, the 22nd day of December, instant, was this day resumed, and having heard argument from Mr. Albert Voorhies for the succession of Widow J. C. Cave Cavailhez, the community between her and her deceased husband, J. B. Cavailhez, and Widow C. F. Remick, defendants and appellees, and from Mr. William S. Benedict on behalf

of the plaintiff and appellant, who closed the argument, the court took the cause under advisement upon the briefs now on file for the respective parties.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *March 20th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, associate justices.

His honor Mr. Justice Blanchard pronounced the opinion and judgment of the court in the following case:

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET ALS. } No. 12966.

On appeal from the seventeenth judicial district court for the parish of Vermilion.

378 For the reasons assigned it is ordered, adjudged, and decreed that the judgment appealed from is avoided and reversed, and proceeding to render such judgment as should have been rendered in the first instance, it is now ordered and decreed that the estate of Laurent Lacassagne, deceased, represented by Marie L. Casey, as administratrix thereof, be, and is, recognized as the owner of the property described in the petition filed, and as such that she be sent into possession thereof, for which purpose a writ of possession is directed to issue.

It is further ordered, adjudged, and decreed that the injunction issued herein be sustained and perpetuated, and that the property be held free from any incumbrance placed upon the same by defendant F. Chapuis or asserted against it by defendants H. Abraham & Son.

It is further ordered, adjudged, and decreed that defendants pay all costs of both courts.

(Mr. Justice Breaux dissents.)

The opinion and judgment in this case — in greater part prepared by Mr. Justice Miller prior to his decease; acted on and adopted as the judgment of the court after his decease.

Opinion of the Court.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *March 20th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, associate justices.

His honor Mr. Justice Blanchard pronounced the opinion and judgment of the court in the following case:

379 LAURENT LACASSAGNE *vs.* H. ABRAHAM & SON ET ALS. No. 12966.

Appeal from the seventeenth judicial district court, parish of Vermilion—Bourges, judge *ad hoc*.

Prepared in greater part by Mr. Justice Miller prior to his decease, acted on and adopted as the judgment of the court after his decease.

Completed and handed down by Mr. Justice Blanchard.

This is an appeal by plaintiff from the judgment dissolving the injunction obtained by him to prevent the seizure and sale of a plantation of which he claims to be the owner under a judgment of one of the defendants against another defendant, F. Chapuis.

The facts of this complicated litigation are: J. B. Cavailhez, a Frenchman, acquired the plantation, the subject of controversy, in 1869. He and his reputed wife made a donation of the property to their daughter. The donation, not proving effective for some cause not material to this discussion, was followed by a sale to Remick, the husband of the daughter. Cavailhez, his reputed wife, and their son-in-law subsequently died, and at the sale of the property of the latter's succession his widow, Marceline Remick, acquired the property.

All these titles were duly recorded.

On the faith of her title, Mrs. Remick, in 1883, obtained a loan, and, to secure its payment, mortgaged the property to A. L. Maxwell.

Thereafter Jeanne Caroline Cave, claiming to have been married to J. B. Cavailhez in France in 1833, brought a suit in the United States circuit court for the western district of Louisiana, alleging her marriage fifty years before, representing that the subsequent marriage of Cavailhez in Louisiana was void; asserted her title, as widow, to one-half of the property acquired by Cavailhez, including the plantation, and averred that he was indebted to her, and that she

had a mortgage on the other half of the plantation to secure
380 that indebtedness. The petition also attacked the donation by Cavailhez to his daughter and his sale to Remick as in fraud of her rights as his wife.

The judgment of the circuit court, rendered in January, 1886, decreed the petitioner to be the lawful wife of J. B. Cavailhez, annulled the donation by him, as well as his sale to Remick, and recognized the wife's rights to the full extent claimed in her petition.

This suit was directed only against Mrs. Remick, individually and as tutrix, the sole survivor of those the bill charged had combined and conspired to deprive the complainant of her rights as the wife of J. B. Cavailhez.

While this litigation of J. Caroline Cave, alleging herself to be the widow of J. B. Cavailhez, was in progress, Maxwell, no party to the litigation, conceiving that his mortgage granted by the recorded owner before the widow Cavailhez made her appearance to set up her claims under the marriage in France of fifty years before was wholly unaffected by that suit, instituted proceedings on his mortgage claim, seized and sold the property, he and Lacassagne becoming the purchasers thereof on the — August, 1885. They entered into possession.

In April, 1886, Mrs. Cave Cavailhez caused a writ of possession to issue on her judgment in the United States circuit court, under which she sought to dispossess Lacassagne, he having become sole owner by purchase of Maxwell's interest. Whereupon Lacassagne filed a bill in the United States circuit court, and averring his ownership and possession, and that he was neither a party to nor bound by the decree in the suit of Mrs. Cave Cavailhez against Mrs. Remick, obtained a writ of injunction to restrain the execution of the writ of possession.

The case found its way to the Supreme Court of the United States, and that tribunal held that the remedy of Lacassagne was at law, not in equity, and that if the mortgage was superior to the right of the widow Cavailhez his remedy at law was ample. The court, in its opinion, referred to the fact that his title had been acquired subsequent to the suit of the widow, and thought the article of our code avoiding alienations of property pending suit for its recovery applied. The bill was dismissed, with full reservation to Lacassagne to enforce his rights at law.

While this litigation was pending in the Supreme Court, the Widow Cavailhez died, and her will constituted F. Chapuis
381 her executor and legatee. He mortgaged the property to Abraham & Son, under whose execution the property was about to be sold.

At this juncture Lacassagne, remitted by the decree of the United States Supreme Court to the assertion of his rights at law, enjoined the sale under the execution of Chapius' creditors, setting up his title to the property.

This is the suit now before us on a second appeal, the first having been determined by us in 1896. 48th Ann., 1160.

On the previous appeal the defense pleaded was *res judicata*, based

on the decree obtained in the suit of Widow Cavailhez against Mrs. Remick. That defense, as well as the other aspects of the case argued, received our attention. We held that the plea of *res judicata* based on a decree in a suit to which Lacassagne was no party could not be sustained as against him. The argument there took a wide range and asserted in its general effect that the mortgage granted by the recorded owner before the claims of the widow Cavailhez were made known could not be enforced by the seizure and sale of the property because of the suit of Mrs. Cavailhez to establish her rights as his widow, based on the marriage in France in 1833.

But our decision maintained that the mortgagee, in good faith acquiring his mortgage on the faith of the recorded title based on the conveyance of J. B. Cavailhez, could not be affected by any fraud imputed to Cavailhez with respect to the wife it is claimed he married in France before he came to Louisiana, and that the enforcement of such a mortgage, created prior to the suit of the widow, was not within the inhibition of alienation of property pending suit for its recovery. Our decree, overruling the plea of *res judicata*, remanded the case for trial on the merits.

On the second trial the defendants supplemented their pleadings by urging the exception of *res judicata*, based on the decree of the Supreme Court of the United States on the bill filed by Lacassagne to enjoin the writ of possession issued in the suit of the widow Cavailhez against Mrs. Remick, 144 U. S., 119. On this exception as well as on the merits the lower court rendered judgment in defendant's favor, and the case is again before us on appeal.

382 The first inquiry is as to the right conferred by the mortgage of this property to Maxwell in 1883, as the plaintiff's title is based on that mortgage and the mortgage is based on the sale of the property in 1869 by J. B. Cavailhez. He was the "head and master," as our code expresses it, of the community. Whether married in France before he came to Louisiana and contracted the marriage here, is unimportant in testing the effect of his sale of the property involved in this controversy in 1869. The power of disposition was his, and the title made by him and spread on the public records gave validity to any subsequent sale or mortgage created on the faith of that title.

If the husband alienates the community property by any fraud to the injury of his wife the law gives to her an action against him and his heirs, but the sale by him is entirely valid as to third persons who in good faith have acquired rights on the faith of the title he spreads on the public records. It is a proposition we deem beyond reasonable controversy that the mortgage to Maxwell, based on the title to the vendee of J. B. Cavailhez and which had stood unquestioned on the public records for fifteen years before Widow Cavailhez asserted her rights under the marriage contracted in France was not assailable by her. This proposition is based on the protection accorded those who act on the faith of the public records, so often recognized by our courts and of general recognition in every system of jurisprudence. It is bottomed upon the principle that the true owner, whoever he may be, is bound by the

title he puts on the public records, so far as respects third persons *bona fide* acquiring rights on the faith of that title.

If the mortgage granted in 1883 was securely protected by law and jurisprudence, it gave to the creditor the right to foreclose it. We cannot conceive that this right, so essential to the creditor, could be taken away by a suit brought afterward by the wife asserting her right to the community, subordinated, as are all her rights, to the power of the husband to mortgage or alienate the community property.

The mortgage creditor, exerting the remedy given him by the contract, seized and sold the property for his debt, and the title passing at the sale was completely vested in the plaintiff Lacassagne.

383 The contention is that the sale was void because when made the suit of the widow Cavailhez was pending. Although the Maxwell mortgage was of record when the suit was brought, she carefully abstained from making him a party. The argument seeks to apply the provision of our law which forbids alienations pending a suit to recover property to the prejudice of the plaintiff bringing the suit.

The article of the code embodying this provision has clear application to cases of alienation pure and simple, not to the enforcement of rights created before the suit was brought. The mortgage created a right to seize and sell the property for the payment of the debt. Under our law the mortgage is a quasi alienation. The seizure and sale is the exercise of the remedy, and is the consequence of the mortgage. If, then, the mortgage is to be deemed an alienation, the title of the plaintiff is not within the scope of the provision forbidding alienations pending the suit, for the mortgage was granted before the suit.

There are expressions in the reasoning of the United States Supreme Court which, taken literally and severed from the context and decree, may seem to give color to defendants' pretensions as to the scope and effect of that decree; but the ground that the plaintiff's remedy was at law disposed of the case and points to the decree as containing all that constitutes *res judicata* in any sense known to the law. That decree simply and only dismissed the bill with full reservation to plaintiff to enforce his rights at law.

Now, what right could he enforce? The mortgage had merged in the title. The supreme court could not have contemplated a suit on a mortgage changed into another right. To remit him to some supposed remedy on a mortgage exposed both to the defense of peremption and that of prescription would have been to substitute a mere shadow for the substance of Lacassagne's right. The decree reserved his legal rights given him by the mortgage. Following that decree, when Lacassagne found the property seized under the execution of the creditor of Chapuis, the legatee of the widow Cavailhez, he resorted to the remedy given him by our law. He asserted his title to the property attempted to be levied on as the property of another, and in our view adopted the only practicable

method of exercising the right left to him by the supreme court.

384 Under the mortgage granted by the head of the community, clothed with full competency to grant it wholly irrespective of whether he had or had not married in France, the mortgage creditor had the right to seize and sell the property in whose hands soever it might be without regard to any change of title by suit, alienation, descent, or any other mode.

Am. & Eng. Encyclop. of Law, vol. 13, pp. 899, 900 and footnotes, *verbo Lis Pendens;* Stuyvesant *vs.* Hone, 1 Sandf. (N. Y.), 419; Watson *vs.* Dowling, 26 Cal., 127.

On what theory, then, are we to hold that the suit to establish the French marriage of Cavailhez denuded the mortgage of the right it gave the creditor to seize and sell? To so hold would be to simply change our jurisprudence and overthrow a rule of property.

Now do we appreciate that the Supreme Court of the United States, in the decision now pleaded as *res judicata* and as effective and intended to destroy the creditor's right to foreclose his mortgage, as sustaining any such contention. The case presented to that court was a bill in equity to restrain the execution of the writ of possession issued by Widow Cavailhez on her judgment against Marceline Diaz, widow of C. H. Remick, deceased.

The plaintiff here, the complainant in that suit, averred his title and possession as the basis for the relief he sought. The court held the plaintiff's remedy was at law, not in equity. We do not think the question of Lacassagne's title was passed upon or intended to be passed upon in that decision. What the court declared and held was that, on the showing made, "a court of equity cannot give the plaintiff any relief until he has established his title by an action at law." 144 U. S., 124. And all his rights with respect to such action at law were reserved to him.

We hold the present suit to be such "action at law" as there contemplated, coupled with injunction to prevent the property being sold under execution for the debt of another alleged not to be the owner. The necessary parties are before the court to adjudicate the question of title raised, and that the suit involves the title is shown by the averments of the petition and by its prayer,

385 which is that plaintiff be decreed the owner of the property and sent into possession thereof.

On the issue thus presented we think the case is with the plaintiff, and that his claim of ownership must be sustained and his right of possession enforced.

For the reasons assigned it is ordered, adjudged, and decreed that the judgment appealed from is avoided and reversed, and proceeding to render such judgment as should have been rendered in the first instance, it is now ordered and decreed that the estate of Laurent Lacassagne, deceased, represented by Marie L. Casey, as administratrix thereof, be and is recognized as the owner of the property described in the petition filed, and as such that she be sent into pos-

session thereof, for which purpose a writ of possession is directed to issue.

It is further ordered, adjudged, and decreed that the injunction issued herein be sustained and perpetuated, and that the property be held free from any incumbrance placed upon the same by defendant F. Chapius or asserted against it by defendants H. Abraham & Son.

It is further ordered, adjudged, and decreed that defendants pay all costs of both courts.

(Mr. Justice Breaux dissents.)

Petition for Writ of Error and Order.

To the hon. chief and associate justices of the supreme court of Louisiana:

The petition of H. Abraham & Son, composed of Henry Abraham & Jacob H. Abraham, and of Jacob H. Abraham, administrator of succession of Francois Chappuis, deceased; of Frank Zengel, public administrator, representing suc'n of Wid. Jeanne Cave Cavailhez; of Armand Moulor, ad'r of suc'n of J. B. Cavailhez, and of Wm. C. H. Remick, respectfully represents—

That they are aggrieved by the judgment rendered herein against them; that there are Federal questions raised on the trial and passed upon by this court; that among other such pleas and defenses raised by petitioners and overruled by this court are the pleas or peremptory exceptions of *res judicata* based upon two judgments rendered by the circuit court of the United States specially set forth in their pleadings, one of which judgments, in matter of
386 Laccassagne & Co. *vs.* F. Chapuis, ex., &c, was taken on appeal to the Federal Supreme Court and affirmed in favor of petitioners against Laurent Lacassagne; that said Federal Supreme Court, in execution of said judgments, maintained the writ of possession by which said Lacassagne was ejected and petitioners put in possession; that the judgment rendered by this hon. court overrules said defences and holds that they are without effect against said Laurent Lacassagne and his legal representatives.

Wherefore petitioners pray to be allowed a writ of error, with supercedeas, to have the decree herein reversed by the Supreme Court of the United States, so that the Federal questions decided by this hon. court against them, who claimed in their several pleadings the aforesaid defences which were rejected by the opinion and decree of this hon. court against contention of said petitioners. —.

Prays for general relief and as in duty bound, etc.

(Signed) DINKELSPIEL & HART,
Att'ys for Abraham & Son.

(Signed) ALBERT VOORHIES,
Att'y of Public Ad'r & of A. Moulor, Ad'r.

(Signed) W. J. FORMENTO,
For Wm. Remick.

Writ of error allowed, returnable in thirty days to the Supreme Court of the United States, with supercedeas, on giving bond in the sum of five thousand ($5,000.00) dollars.

New Orleans, April 13, 1899.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

(Endorsed:) No. 12966. Supreme court of La. Laurent Lacassagne *vs.* H. Abraham & Son. Petitition for writ of error with supersedeas. Filed 13 April, 1899. (Signed) T. McC. Hyman, clerk.

Copy of Writ of Error.

UNITED STATES OF AMERICA, *ss:*

387 The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the said suit between Laurent Lacassagne, since deceased, through Marie L. Casey, administratrix, plaintiff, and H. Abraham & Son, Henry Abraham and Jacob H. Abraham, members thereof, and Jacob H. Abraham, adm'r of succession of Francois Chapuis, deceased, defendants, and intervenors Frank Zengel, public administrator, representing the succession of Widow Jeanne Cave Cavailhez in community, and Armand Moulon, intervenor, as administrator of the succession of Jean Baptiste Cavailhez, deceased, and of intervenor Widow C. H. Remick, in her own right and as tutrix of her minor children and as tutrix administering the estate of C. H. Remick, deceased, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said H. Abraham & Son, Henry Abraham and Jacob H. Abraham, members thereof, and Jacob H. Abraham, administrator of the succession of Francois Chapuis, deceased, defendants, and to intervenors Frank Zengel, public administrator, representing the succession of Widow Jeanne Cave

Cavailhez in community, and Armand Moulor, intervenor, as administrator of the succession of Jean Baptiste Cavailhez, deceased, and to intervenor Widow C. H. Remick, in her own right and as tutrix of her minor children and as tutrix administering the
388 estate of C. H. Remick, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the twentieth day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.] (Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
(Signed) FRANCIS T. NICHOLS,
Chief Justice.

(Endorsed:) No. 12966. Laurent Lacassagne *versus* H. Abraham & Son. (Writ of error.) Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana in pursuance of the statute in such cases made and provided this 20th day of April, one thousand eight hundred and ninety-nine. (Signed) Dinkelspiel & Hart, (signed) A. Voorhies, (signed) W. J. Formento, attorneys of plaintiff in error. Filed April 20th, 1899. (Signed) Paul E. Mortimer, dep. clerk.

Assignment of Errors.

Supreme Court of La.

LAURENT LACASSAGNE
vs.
H. ABRAHAM & SON ET AL. } No. 12966.

389 And now into court comes H. Abraham & Son and the other petitioners for writ of error herein and assign as error the following:

1. That this court erred in overruling the peremptory exception of *res judicata* set up by defendants against the demands of the plaintiff, which was based upon two decrees of the circuit court of the United States specially pleaded in this case, one of which de-

crees was in the matter of Laurent Lacassagne *versus* F. Chapuis, executor, &c., was taken by appeal to the Supreme Court of the United States and there affirmed in favor of the petitioners herein and against said Lacassagne; that said decree of the Supreme Court of the United States maintained the writ of possession by which the said Lacassagne was ejected from the possession of the property in controversy in this case and petitioners put in possession thereof.

2. That this court erred in holding that said defences were without effect against the said Laurent Lacassagne and his legal representatives.

(Signed)	DINKELSPIEL & HART,
Do.	A. VOORHIES,
Do.	W. A. WHITE, AND
Do.	W. J. FORMENTO.

(Endorsed:) No. 12966. Supreme court of Louisiana. Laurent Lacassagne *vs.* H. Abraham & Son. Assignment of errors. Filed Ap'l 20th, 1899. (Signed) Paul E. Mortimer, dep. clerk.

Bond for Writ of Error.

Know all men by these presents that we, H. Abraham & Son, Henry Abraham & Jacob H. Abraham, and Jacob H. Abraham, as adm'r of succession of Francois Chapuis, deceased; of Frank Zengel, public administrator, representing succession of Jeanne Cave Cavailhez in community; of Armand Moulor, intervenor, as administrator of succession of Jean Baptiste Cavailhez, deceased, and of intervenor Widow C. H. Remick, in her own right and as tutrix of her minor children and as tutrix administering the estate of C. H. Remick, deceased, as principal-, and Simon Steinhardt, of
390 New Orleans, La., as surety, are held and firmly bound unto Laurent Lacassagne, deceased, & his heirs, administrators, executors, and assigns, and to Marie L. Casey, administratrix of the succession of said Laurent Lacassagne, deceased, in the full and just sum of five thousand dollars, to be paid to the said Lacassagne's administratrix, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of April, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a session of the honorable the supreme court of Louisiana in a suit depending in said supreme court, wherein Laurent Lacassagne is plaintiff and H. Abraham & Son *et als.* are defendants, judgment was rendered against said H. Abraham & Sons *et als.*, defendants, and the said H. Abraham & Sons *et als.* having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Lacassagne's administratrix *et als.*, citing and admonishing them to be and ap-

pear at the Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said H. Abraham & Sons *et al.* shall prosecute their writ to effect and answer all damages and cost if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) H. ABRAHAM & SON,
HENRY ABRAHAM &
JACOB ABRAHAM &
JACOB H. ABRAHAM,
As Adm'r of Suc. of Francois Chapuis, Deceased.
FRANK ZENGEL,
Public Administrator, Representing Succession of Jeanne Cave Cavailhez in Community.
ARMAND MOULOR,
Intervenor, Administrator of Succession of Jean Baptiste Cavailhez, Deceased.
WDW. C. H. REMICK,
In Her Own Right and as Tutrix of Her Minor Children and as Tutrix Administering Estate of C. H. Remick, Deceased,
By DINKELSPIEL & HART, *Att'ys.* [L. S.]
(Signed) S. STEINHARDT. [L. S.]

Sealed and delivered in the presence of—

(Signed) W. O. HART.
Do. PERCY S. BENEDICT.

391 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Louisiana, }

Personally appeared Simon Steinhardt, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the parish of Orleans, State of Louisiana, and is worth the full sum of five thousand ($5,000) dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) S. STEINHARDT.

Subscribed and sworn before me this 20th day of April, 1899.

[SEAL.] (Signed) W. O. HART, *Not. Pub.*

(Endorsed:) No. 12966. United States circuit court, eastern district of Louisiana. Laurent Lacassagne *vs.* H. Abraham & Son. Bond for writ of error. Filed April 20th, 1899. (Signed) Paul E. Mortimer, deputy clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing three hundred and ninety-one pages contain a full, true, and complete copy of the transcript of the proceedings had in the seventeenth judicial district court in and for the parish of Vermilion in a certain suit wherein Laurent Lacassagne was plaintiff and H. Abraham & Son *et als.* were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiff, which appeal is now on the files thereof under No. 12966.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of
392 New Orleans, this eighth day of May, anno Domini one thousand eight hundred and ninety-nine, and in the one hundred and twenty-third year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

T. McC. HYMAN, *Clerk.*

Certificate of the Chief Justice.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this eighth day of May, anno Domini one thousand eight hundred and ninety-nine.

Seal Supreme Court of the State of Louisiana.

FRANCIS T. NICHOLLS,
Chief Justice.

393 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Laurent Lacassagne, since deceased, through Marie L. Casey, administratrix, plaintiff, and H. Abraham & Son, Henry Abraham and Jacob H. Abraham, members thereof, and Jacob H. Abraham, adm'r of the succession of Francois Chapuis, deceased, defendants, and intervenors Frank Zengel, public administrator, representing the succession of Widow Jeanne Cavé Cavailhez in community, and Armand Moulor, intervenor, as administrator of the succession of Jean Baptiste Cavailhez, deceased, and of intervenor Widow C. H. Remick, in her own right and as tutrix of her minor children and as tutrix administering the estate of C. H. Remick, deceased, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution
394 or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said H. Abraham & Son, Henry Abraham and Jacob H. Abraham, members thereof, and Jacob H. Abraham, administrator of the succession of Francois Chapuis, deceased, defendants, and to intervenors Frank Zengel, public administrator, representing the succession of Widow Jeanne Cavé Cavailhez in community, and Armand Moulor, intervenor, as administrator of the succession of Jean Baptiste Cavailhez, deceased, and of intervenor Widow C. H. Remick, in her own right and as tutrix of her minor children and as tutrix administering the estate of C. H. Remick, deceased, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the twentieth day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
FRANCIS T. NICHOLLS,
Chief Justice.

395 [Endorsed:] No. 12966. Laurent Lacassagne *versus* H. Abraham & Son. Writ of error. Filed April 20th, 1899. Paul E. Mortimer, dep. clerk.

396 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Laurent Lacassagne, since deceased, and his heirs, administrators, executors, and assigns, and to Marie L. Casey, administratrix of the succession of said Laurent Lacassagne, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein H. Abraham & Son, composed of Henry Abraham and Jacob H. Abraham, and Jacob H. Abraham, administrator of succession of Francois Chapuis, deceased; Frank Zengel, public administrator and administrator of succession of Widow Jeanne Cave Cavailhez; Armand Moulor, administrator of succession of J. B. Cavailhez, and Widow C. H. Remick, in her own right and as tutrix of her minor children and as tutrix administering the estate of C. H. Remich, deceased, are plaintiffs in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the State of Louisiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

397 [Endorsed:] R. Or W. S. Benedict. Blanc. April 20, '99. Supreme court of the State of Louisiana. No. 12966. H. Abraham & Son, composed of Henry Abraham and Jacob H. Abra-

ham, and Jacob H. Abraham, administrator of succession of Francois Chapuis, deceased; Frank Zengel, public administrator and administrator of succession of Widow Jeanne Cave Cavailhez; Armand Moulor, administrator of succession of J. B. Cavailhez, and Widow C. H. Remick, in her own right and as tutrix of her minor children and as tutrix administering the estate of C. H. Remich, deceased, plaintiffs in error, *versus* Laurent Lacassagne, since deceased, and his heirs, administrators, executors, and assigns, and Marie L. Casey, administratrix of the succession of said Laurent Lacassagne, deceased, defendants in error. Citation. Supreme court, La. Filed April 22nd, 1899. Paul E. Mortimer, dep. clerk.

Sheriff's Return.

Received Thursday, Apr. 20, 1899, and on the same day, month, and year served a copy of the within citation on Laurent Lacassagne, since deceased, and his heirs, administrators, executors, and assigns, and Marie L. Casey, administratrix of the succession of said Laurent Lacassagne, deceased, defendants in error, by personal service on W. S. Benedict, their attorney of record.

Returned same day.

Sh'ff's fees, 50c.

J. ARTHUR BLANC, *D'y Sh'ff.*
BLANC.

James Arthur Blanc, deputy civil sheriff for the parish of Orleans, Louisiana, being sworn, deposeth and says that he made a personal service of a copy of the within citation on William S. Benedict, attorney of record for the defendants in error in this suit.

J. ARTHUR BLANC.

Sworn to and subscribed before me, at the city of New Orleans, this twenty-second day of April, A. D. 1899.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Deputy Clerk Supreme Court of Louisiana.

Endorsed on cover: File No., 17,415. Louisiana supreme court. Term No., 301. H. Abraham & Son, composed of Henry Abraham and Jacob H. Abraham, *et al.*, plaintiffs in error, *vs.* Marie L. Casey, administratrix of the succession of Laurent Lacassagne, deceased. Filed May 20th, 1899.

No. 62.

FILED
OCT 9 1900
JAMES H. McKENNEY,
Clerk.

By. a Maury, Voorhies & Hart for Pl. in Er.

Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Oct. 9 1900.

No. 62

H. ABRAHAM & SON AND OTHERS, PLAINTIFFS IN ERROR,

vs.

MARIE L. CASEY, ADMINISTRATRIX OF THE SUCCESSION OF LAURENT LACASSAGNE, DECEASED.

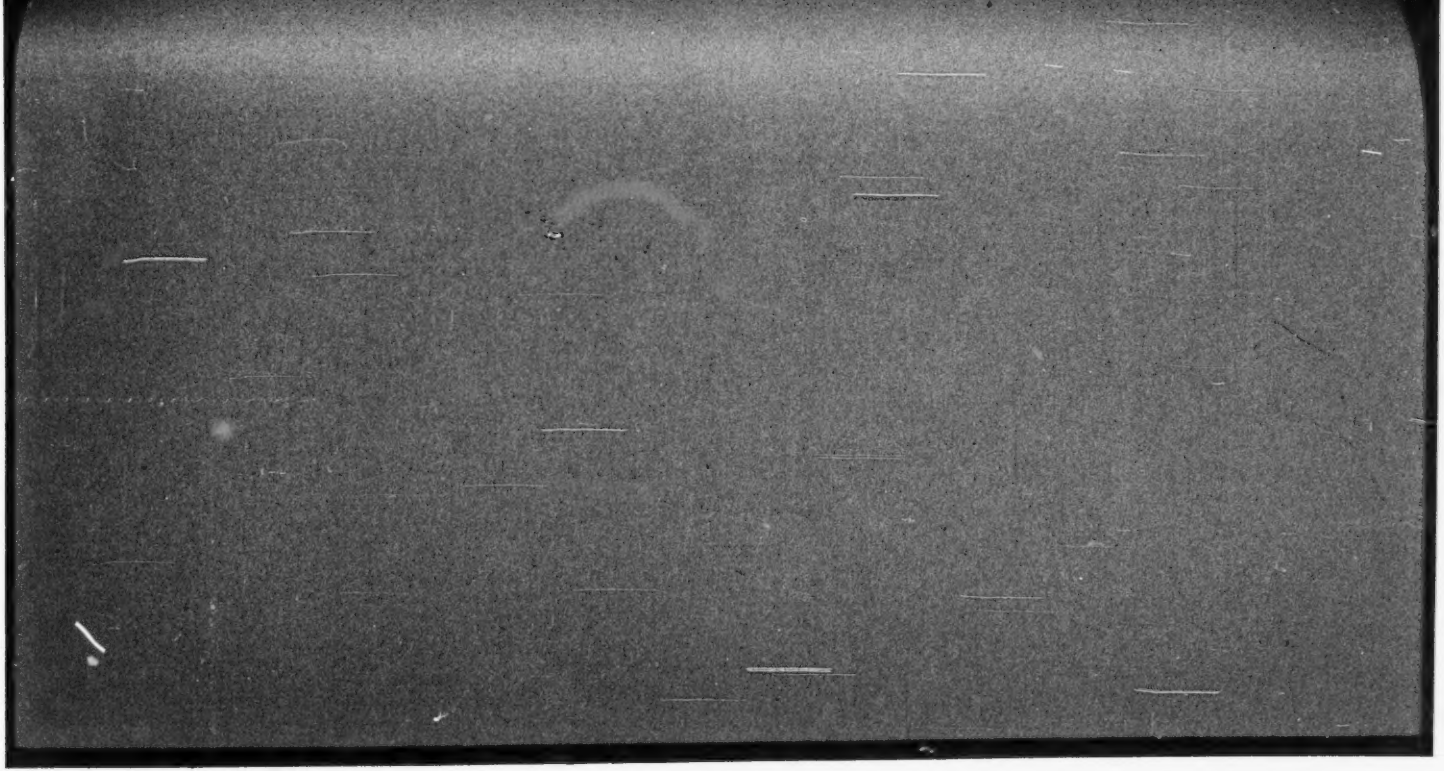
IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF FOR PLAINTIFFS IN ERROR.

WM. A. MAURY,
ALBERT VOORHIES,
W. O. HART,
For Plaintiffs in Error.

WASHINGTON, D. C., 1505 PENNA. AVE., *April* 16, 1900.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 5-26-1900



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 301.

H. ABRAHAM & SON AND OTHERS, PLAINTIFFS IN ERROR,

vs.

MARIE L. CASEY, ADMINISTRATRIX OF THE SUCCESSION OF LAURENT LACASSAGNE, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief for Plaintiffs in Error.

FEDERAL QUESTION.

The federal question set up and presented in the record is the refusal of the Supreme Court of Louisiana to give due effect to certain decrees of the Circuit Court of the United States for the Western District of Louisiana, one of which is supported and sustained by the decree of this Court.

STATEMENT.

This is a suit in revendication by Laurent Lacassagne to establish his title to a certain plantation in the Parish of Vermilion, Louisiana, and to enjoin plaintiffs in error from enforcing a certain judgment by seizure and sale of the plantation.

At the time this suit was instituted, the plaintiffs in error, H. Abraham & Son, had brought and prosecuted to final judgment a suit for the enforcement of certain acts of special mortgage by one Chapuis, embracing the plantation here in question, and securing thereon debts due by Chapuis, amounting, in the aggregate, to $3,572.02, with interest (pp. 67–97). To enforce the judgment thus obtained, the sheriff of the Parish of Vermilion levied an execution on the said plantation, and advertised it for sale.

To prevent this threatened sale, Laurent Lacassagne, whose administratrix is the defendant in error, instituted these proceedings against Abraham & Son and Chapuis in the 17th Judicial District Court, Parish of Vermilion, claiming in his petition to be the absolute owner of the plantation, and praying that the sale might be perpetually enjoined, and that the land in question might "be decreed to be the property of petitioner, free from any incumbrance created by the said Chapuis, and be ordered restored to his possession, and that the said Abraham & Son be authorized to pay petitioner the said sum of one thousand dollars damages, as well as the costs of this suit" (pp. 1–3).

Lacassagne subsequently filed a supplemental petition making additional parties (pp. 11, 12), which, however, was afterwards withdrawn (p. 13).

According to the petition of Lacassagne, Chapuis, the author of the said mortgages, never had a *scintilla* of interest in the plantation which, he avers, was about to be sold for a stranger's debts.

To this extraordinary position, that plaintiffs in error lent Chapuis over three thousand dollars of their money on the faith of mortgages *resting on nothing*, they reply, *inter alia*, that Lacassagne is judicially foreclosed and estopped, by the decrees aforesaid, to set up any claim to ownership of the property, and to that end, Chapuis and Abraham & Son each filed a peremptory exception of *res judicata* (pp. 4, 5, and 7, 8).

Chapuis also intervened as testamentary executor of the Widow Cavé, adopting the peremptory exception of *res judicata*, by him theretofore filed individually, and relying on the same in opposition to the petition of Lacassagne (p. 6).

The facts necessary to understand the federal question, involved in these exceptions of *res judicata*, are, as follows:

The land or plantation in question belonged to the community that formerly existed between Jean Baptiste Cavailhez, and his wife, Jeanne Caroline Cavé, who were married in France and were citizens of that country.

The wife, having been abandoned by her husband, continued to reside in France, while the husband took up his residence in Louisiana and, after acquiring said plantation, lived thereon with his natural daughter, Marcelline, the fruit of an adulterous intercourse with one Ernestine Diaz.

Marcelline married one C. H. Remick, and on August 19, 1869, Jean Baptiste Cavailhez and the woman Ernestine Diaz passed an act of sale of the plantation to C. H. Remick (pp. 16, 17).

At the same time and place, there was executed a marriage contract between said Remick and said Marcelline, in which act the said Jean Baptiste Cavailhez and the woman, Ernestine Diaz, who were also parties to it, settled on said Marcelline a promissory note for $7,000, given by said Remick as part of the stipulated purchase price of $15,000 for said plantation (pp. 18, 19).

Jean Baptiste Cavailhez having died some time in April, 1882, his widow, Jeanne Caroline Cavé filed a bill in equity, averring herself to be a citizen of France, in the Circuit Court of the United States for the Western District of Louisiana against Marcelline Cavailhez, widow of C. H. Remick, deceased, in her own right and as tutrix of her minor children, and as tutrix administering the estate of said Remick, deceased, citizens of the State of Louisiana (pp. 178–180).

The bill alleged that complainant was lawfully married to Jean Baptiste Cavailhez, on December 10, 1833:

That during the existence of the marriage her husband purchased the plantation and other property, which was subject to a tacit mortgage to secure the reimbursement of all moneys received for her and from her by him and converted to his own use:

That while he was her lawful husband, Jean Baptiste Cavailhez contracted an unlawful marriage with Ernestine Diaz, since deceased: and that the defendant, Marcelline, was the issue of that connection:

That the act of sale, and the marriage contract, and the donation in dowry of the $7,000 note, to which transactions special reference has already been made in this statement, were the result of a conspiracy formed for the purpose of

defeating complainant's rights, and of benefiting, exclusively, the daughter of the unlawful wife:

That the succession of her late husband is indebted to her in the sum of $5,310.

The bill prayed the following relief:

(1.) That the pretended sale and marriage contract be declared null and void:

(2.) That complainant be declared the widow of Cavailhez, and his lawful wife up to the time of his death, and that the marriage between Cavailhez and Ernestine Diaz be declared absolutely null and void:

(3.) That the plantation &c. be decreed to be still the property of the estate of Cavailhez; that complainant be recognized as the owner of one undivided half of the plantation &c., and as a mortgage creditor of Cavailhez, secured on the other half, to the extent of $5,310.

The widow, Remick, answered the bill (pp. 184–186).

The court *decreed*, that the act of sale by Cavailhez and Ernestine Diaz to Clark H. Remick should be *annulled and avoided;* that the act of donation or dowry from Cavailhez and Ernestine Diaz to Marcelline Cavailhez was null and void; that complainant was the lawful widow of Cavailhez, and, as such, *the lawful owner of the undivided half of the plantation &c.;* that Ernestine Diaz never was the lawful wife of Cavailhez; that complainant was entitled to judgment against the estate of Cavailhez for $5,310, with interest &c., secured by a mortgage lien on his estate.

The decree also allows the widow Remick $1,500 on her

reconventional demand for improvements, with right of mortgage or privilege on the property named in the bill.

In furtherance of this decree, complainant was put in possession of the plantation (p. 24).

Upon the death of the Widow Cavailhez, on March 6, 1886 (p. 175), her undivided moiety of the plantation was, by her will, devolved on the plaintiff in error, Chapuis (pp. 190–191).

The other half of the plantation also fell to Chapuis, on June 3, 1889, as purchaser under a sale thereof ordered by the Court having jurisdiction in the matter of the succession of Jean Baptiste Cavailhez, deceased (pp. 222–224).

Thus at the time of the passing of the acts of mortgage of Chapuis securing the debts held by plaintiffs in error Abraham & Son, Chapuis claimed ownership of *the whole* of the plantation in question.

Chapuis having died pending the present suit, his succession is represented by his administrator, J. H. Abraham (p. 10).

We will now briefly refer to the title set up by Lacassagne, the plaintiff below, to the plantation in question.

The plantation, on the death of Remick, was sold as property of his succession and bought by his widow, Marcelline.

She mortgaged the same, on August 22, 1883, to secure one A. G. Maxwell in the sum of $3,488.50, with interest, &c. (pp. 30, 31).

The debt being overdue and unpaid, Maxwell applied for and obtained an order of seizure and sale (pp. 32, 33), in May, 1885, under which the mortgage was foreclosed and the plantation sold to Maxwell and Lacassagne, on August 15, 1885 (pp. 25–27), and, thereafter, to wit, on October 25,

1885, Lacassagne purchased Maxwell's interest, and the same was conveyed to him (pp. 27, 28).

On April 15, 1885, Lacassagne filed a bill in equity in the United States Circuit Court for the Western District of Louisiana against Francois Chapuis, in his own right and as testamentary executor of the Widow Jeanne Caroline Cavé Cavailhez (pp. 150–154).

The bill attacks the validity of the decree in the suit of the Widow Cavailhez against the Widow Remick and her children, on the ground, that complainant and Maxwell were not parties to it; that the Widow Cavailhez falsely described herself as a citizen of France, she being a citizen of Louisiana, and, consequently, that the Court had no jurisdiction of her bill; that the writ of possession under which the Widow Cavailhez was put in full possession of the plantation was unwarranted by the decree, and, therefore, void; that complainant, Lacassagne, was in possession of the property by his laborers, servants, and employés at the time said writ of possession was executed, and still claims to be in possession, although deterred from entering upon said property by Chapuis' agent.

The bill prays that Chapuis may be enjoined from interfering with complainant's possession; that the decree in favor of the Widow Cavailhez be adjudged wholly void, or, at least, void as to complainant; that the possession of Chapuis and his agent be adjudged void, and that they be ordered to vacate the property.

The bill, coming on for hearing on a demurrer for want of equity (p. 155), was dismissed (p. 168); whereupon, an appeal was allowed and perfected to this Court (pp. 168–171), where the decree below was *affirmed*, with the qualification,

however, that it should be without prejudice to an action at law (144 U. S., 119).

In the principal case, against Abraham & Son and Chapuis, the court of first instance, on April 7, 1894, sustained the exceptions of *res judicata*, and adjudged "that plaintiff's demand be, and the same is hereby, rejected and his suit dismissed at his costs" (pp. 45, 46) for the reasons stated in the record (pp. 37–41).

From that judgment an appeal was taken to the State Supreme Court, where, on March 23, 1896, the judgment was reversed and the cause remanded for trial on the merits (pp. 118–121), Mr. Justice Breaux dissenting (p. 122).

Thereafter, the cause, being then on the merits and at large, was brought to issue by the answer of Abraham & Son (133–134), filed on December 15, 1897. This answer adopts the allegations and defenses set up in the answer, or petition of intervention, of Armand Moulor, administrator &c. (pp. 126–129), with the exception of certain averments therein contained, which it is unnecessary to refer to specially.

On April 17, 1897, Public Administrator Zengle, as administrator of the succession of the Widow Cavailhez, intervened for the protection of the community rights of that succession (pp. 124–126).

And, on the same day, Armand Moulor, administrator of the succession of Jean Baptiste Cavailhez, filed an intervention (pp. 126–129).

On November 26, 1897, the Widow Remick filed her petition of intervention (pp. 130–131).

The answers and petitions of intervention, after reiterating the former exceptions of *res judicata*, set up, seasonably and for the first time, the decree of the Circuit Court of the

United States, in the suit of revendication in chancery instituted by Lacassagne against Chapuis, dismissing the bill, and the affirmance of that decree by this court (144 U. S., 119), as conclusive against Lacassagne, and as necessitating the dismissal of the present suit.

The cause having come on for trial and hearing on the merits and on the new defense of *res judicata*, judgment was again rendered by the trial court for defendants, Abraham & Son (pp. 240, 241), for the reasons stated in the record (pp. 238–240).

FINAL JUDGMENT OF THE STATE SUPREME COURT.

From this judgment there was an appeal to the Supreme Court of the State, where the judgment of the trial court was reversed on March 20, 1899, the court, at the same time, proceeding to render such judgment as should have been entered by the court below, Mr. Justice Breaux dissenting (p. 247; *Opinion of Court at pp. 248–253*).

WRIT OF ERROR.

It is to have this judgment reviewed and reversed that the present writ of error was sued out, the same having been duly allowed on petition (pp. 253–255).

ASSIGNMENT OF ERRORS.

Errors are assigned in the record (pp. 255–256) as follows:

> And now into court come H. Abraham & Son and the other petitioners for writ of error herein and assign as error the following:
>
> 1. That this court erred in overruling the peremptory exception of *res judicata* set up by defendants against the demands of the plaintiff, which was based upon two decrees of the circuit court of

the United States specially pleaded in this case, one of which decrees was in the matter of Laurent Lacassagne *versus* F. Chapuis, executor, &c., was taken by appeal to the Supreme Court of the United States and there affirmed in favor of the petitioners herein and against said Lacassagne; that said decree of the Supreme Court of the United States maintained the writ of possession by which the said Lacassagne was ejected from the possession of the property in controversy in this case and petitioners put in possession thereof.

2. That this court erred in holding that said defenses were without effect against the said Laurent Lacassagne and his legal representatives.

ARGUMENT.

The Supreme Court of Louisiana, in its first opinion (pp. 117–122), declined to give *any* effect to the judgment of the Circuit Court of the United States for the Western District of Louisiana, as against the defendant in error, the administratrix of the succession of Laurent Lacassagne, and, in its second opinion (pp. 248–353), declined to accept the conclusions of this court in the case of Lacassagne *vs.* Chapuis (144 U. S., 119), and adhered to its first opinion.

On the first trial, the court of first instance sustained the peremptory exceptions of estoppel and *res judicata*, and on the second trial the judge *ad hoc* declined to accept the conclusions of the State Supreme Court and followed those of this Court in the above-cited case, for the following reasons:

> We have always respected the opinions and the judgments of our honorable State supreme court, and were not this case appealable to a higher court we would submit to the aforesaid opinion of our superior, but when we feel convinced that our own superior court will be reversed by the honorable Supreme Court of the United States on a writ of error to the State supreme court, it becomes our duty to render a judgment in accordance with the plain letter of article number 2453 of the Revised Civil Code of Louisiana, and to decree that the sale of the property in dispute to L. Lacassagne by the sheriff of Vermilion parish, Louisiana, under

the foreclosure proceedings before this court of Maxwell *vs.* Widow C. H. Remick, *and* is null and void, because it was made during the pendency of the suit of J. B. Cavailhez *vs.* Mrs. C. H. Remick before the U. S. circuit court for the western district Louisiana, in direct violation of article 2453 of the R. C. C. of La., 1870. Opinion of the U. S. Supreme Court in L. Lacassagne *vs.* Francois Chapuis, ex. This court considers that in so doing it is far more equitable than if it contained [sustained?] the validity of the sale aforesaid, for if the creditor has the right to execute his mortgage when it is due the third possessor certainly has the right to pay the mortgage up to the day of sale. Now, if the creditor, Maxwell, had waited to foreclose until after the final judgment was rendered in the suit of Cavé *vs.* Widow C. H. Remick, he would have lost none of his rights as creditor. The title to the land mortgaged being quieted, the land certainly would have brought more if sold at auction, and the debtor as well as Chapuis or Cavé would have been benefited. Again, can the honorable court say that the successful wife would not have found means to pay this mortgage, and thus save the property? We say, therefore, that this decree of ours is just and equitable (pp. 238–239).

Here then is a clear federal question, this Court having cided that the question whether a State Court has given e effect to the judgment of a Court of the United States a question arising under the Constitution and laws of the ited States (Crescent Live Stock Co. *vs.* Butchers' Union, 0 U. S., 141–146), and one which may be brought to this urt for revision (Dupasseur *vs.* Rocherau, 21 Wall., 134; nbry *vs.* Palmer, 107 U. S., 3).

The determination of the question presented by this writ error involves the interpretation of article 2453 of the vil Code of Louisiana, which is as follows:

> Art. 2453. The thing, claimed as the property of the claimant, cannot be alienated, pending the action, so as to prejudice his right. If judgment be rendered for him, the sale is considered as a sale of another's property and does not prevent him from being put in possession by virtue of such judgment.

It will be remembered that Lacassagne claims title under the order of seizure and sale foreclosing the widow Remick's mortgage to A. G. Maxwell; that he and Maxwell purchased the plantation at that sale; and that, subsequently, Lacassagne bought Maxwell's interest, and now claims absolute ownership of the property.

As has been stated, the order of seizure and sale was obtained in May, 1885 (pp. 32-35), and executed in July following (p. 26), and, consequently, the proceedings took place during the pendency of the chancery suit in revendication brought by the widow Cavailhez against the widow Remick and her children, which was brought in the United States Circuit Court on March 5, 1884, and closed by a final decree on January 11, 1886.

The Maxwell mortgage was dated August 22, 1883, and recorded the same day.

Now the suit of the widow Cavailhez against the widow Remick having resulted in favor of the former, it is manifest that if the foreclosure sale to Maxwell and Lacassagne was within article 2453 of the Civil Code, it was null and void, "as the sale of another's property," and, of course, no obstacle whatever to the enforcement of the decree of the United States Circuit Court, establishing the right of the widow Cavailhez, in community, to the undivided half of the plantation.

We begin the discussion upon the effect of article 2453 on the foreclosure sale, by an examination of the opinion of this Court in the case of Lacassagne *vs.* Chapuis (144 U.S., 119), which, we think, settles this controversy.

The object of that suit, which was in equity, against Chapuis, who, as already stated, stood in the place of the

widow Cavailhez, or Cavé, was to have her decree against the widow Remick declared wholly void for want of jurisdiction in the Circuit Court, owing to the alleged falsity of the averment in the bill that the widow Cavailhez was a citizen of France, or, at least, that it and the process under it should be declared void as to him, Lacassagne, because he was no party to the decree and could not be legally affected by it, in any way, although he had been dispossessed by its enforcement.

The case was heard by the Circuit Court on demurrer for for want of equity in the bill, and the bill was dismissed absolutely.

Undoubtedly, the bill filed by Lacassagne presented a matter of equitable cognizance, in so far as it averred possession in him and prayed that the decree complained of and the process under it should be declared void, and it became the duty of the Circuit Court and of this Court, on appeal, to determine whether the relief asked for should be granted. In deciding that question, this Court held that the decree should be affirmed: first, because the objection as to the citizenship of the widow Cavailhez could not be raised in the way taken; secondly, that the point made by Lacassagne that he was not a party to the decree was not sustainable, because he was bound by the decree against the widow Remick, on the ground that he "undertook to acquire rights in the plantation under Marcelline Cavailhez, by the sheriff's deed, to the prejudice of the widow Cavé; and his possession, so far as it affected the latter, was the possession of Marcelline Cavailhez [widow Remick], and the writ was properly issued and executed;"

and then the Court proceeded to quote article 2453, in support of its conclusion (p. 124).

It will be perceived, then, that what this Court said about the binding effect of the decree against the widow Remick was *necessary to the proper decision of the only question of equitable cognizance mentioned in the bill*, and that, if this Court had been of opinion that the point was well taken, it might have been its duty to declare the decree and the process under it null and void as to Lacassagne.

But this point having been determined adversely to Lacassagne, all that was left of his bill was the complaint that his possession had been irregularly and improperly disturbed by the process of the Circuit Court under which the widow Cavailhez, or Cavé, was put in possession. But this Court, being of opinion that he was entirely out of possession of the plantation, held that he could not be reinstated therein by means of the writ of injunction, which could not be used for that purpose, and that his true relation to the process attacked was that of "a third opposition," which is a summary proceeding at law that must be instituted in the Court whose process is complained of, in obedience to section 397 of the Code of Procedure (Ed. 1894), which declares:

> This opposition must be made before the Court which granted the order of seizure or the judgment in virtue of which the provisional seizure has been effected (Berard *vs.* Young, 26 A., 598; Lobdell *vs.* Union Bank, 8 A., 117; Adams *vs.* Dannis, 29 A., 320; Freeman *vs.* Howe, 24 How., 453; Buck *vs.* Colbath, 3 Wall., 334; Rio Grande R. R. Co. *vs.* Gomila, 132 U. S., 478).

But the present suit, so far from being one of that character, is an attempt of a State Court to undo what has been done by the Circuit Court and this Court; in short, it is a

blow aimed at the independence of the federal judiciary, as well as a violation of judicial comity.

The present suit is, substantially, a repetition of the one decided by this Court in favor of Chapuis, and consequently Abraham & Son, who claim under Chapuis, are entitled to the protection of the decree which this Court declared binding on Lacassagne. And touching that decree, it may be further said, that Lacassagne, when he bought, had knowledge of the suit in which it was rendered and refrained from becoming a party thereto (Intervention of Widow Remick, p. 131; Interventions of Zengle, p. 125, and of Moulor, p. 125); and the following passage from the writ of possession, under which the Marshal put the widow Cavailhez in possession of the plantation, shows that the decree it was to enforce was rendered with a view to the illegal foreclosure proceedings set on foot by Maxwell:—

> You are hereby ordered and commanded to eject defendant and *those who may be holding said property described as aforesaid under the said defendant by private deed of transfer or otherwise since the institution of aforesaid suit*, to wit, March 5, 1884, *and during the pending of said suit*. (p. 24.)

Plainly then the meaning and effect of article 2453 have passed, irrevocably, into the domain of the thing adjudged, and no question upon either can be again stirred by the parties hereto.

This Court, in affirming the decree of the Circuit Court, did so with the qualification, that it should be "without prejudice to an action at law;" not, however, to an action at law to be instituted to *overturn what this Court had established*, but to "*lawful proceedings*" to enforce the mortgage,

in lieu of those which this Court declared illegal and abortive.

Logically, the reservation in the decree can be understood in no other way than as referring to new foreclosure proceedings under the mortgage, to which proceedings the decrees of the Circuit Court and this Court would be no bar. No other proceeding remained open to Lacassagne, who, by virtue of his purchase from Maxwell, must, it would seem, be considered owner of the debt and mortgage, that being the legal effect of the transactions between the two.

But if there was any other proceeding at law to which this Court could have referred in the reservation in its decree it was that of a third opposition, in which it might be open to Lacassagne to apply to the Circuit Court to modify the process under which the widow Cavailhez, or Cavé, had been placed in possession so as to restrict its operation to her community moiety of the plantation, which was the extent to which she was adjudged to be entitled thereto.

The meaning of article 2453 being thus established in this litigation, its effect, as interpreted, was to conclude Lacassagne by the decree rendered against the widow Remick at the suit of the widow Cavailhez. When he bought, it was with full knowledge that a decree against the widow Remick would bind and conclude him as fully as though it had been rendered directly against him. Clearly, then, he cannot evade the conclusiveness of this decree in any other controversy between the same parties or their privies. It follows, therefore, that the plea of the thing adjudged is a complete bar to the present suit.

But it is by no means open to Lacassagne or his succession to contend here that he cannot be affected by the decree ob-

tained by the widow Cavailhez, or Cavé, against the widow Remick, because not a party thereto. Having, as we have seen, assailed that decree as void against him in the suit against Chapuis, and this Court and the Circuit Court having decided, in that suit, that he was bound by the decree, it is manifest that he is as much concluded by it as if he had been a party to it originally.

THE EFFECT OF THE DECISIONS OF THE STATE SUPREME COURT.

The suits between the Widow Cavailhez and the Widow Remick, and between Lacassagne and Chapuis, and between Lacassagne and Abraham & Son and Chapuis are parts of one and the same litigation, and the jurisdiction of the United States Circuit Court having first attached to the subject-matter of the litigation, the decision of that court as to the effect of article 2453, affirmed by this Court, became a thing adjudged between the parties to this litigation and should have been followed and supported by the State Supreme Court, however widely that court might have differed in opinion from this Court and the Circuit Court. Supposing, for the sake of argument, that the decisions of the Circuit Court and of this Court were erroneous, they had become consecrated by the principle of *res judicata*, and should have been enforced by the State Court as importing absolute verity between the parties and their privies. *Res judicata pro veritate accipitur.* As this Court has said, that principle is so deeply implanted in the jurisprudence of Louisiana that commentators upon that jurisprudence have said, that *res judicata* "*renders white that which is black, and straight that which is crooked. Facit ex curvo rectum, ex albo nigrum.*" (Jeter *vs.* Hewitt *et al.*, 22

How., 352, 364.) By thus submitting to and enforcing the principle of *res judicata*, the State Supreme Court would not have been committed, in any way outside of this suit, to the interpretation placed on article 2453 by this Court.

The attempt, therefore, of the State Supreme Court to show that this court and the Circuit Court were wrong in their interpretation of article 2453 of the Civil Code was, we submit, with great respect, irrelevant to the question here raised by the exceptions of *res judicata* and estoppel.

THIS COURT WILL NOT RECEDE FROM ITS OPINION.

It is perfectly evident from the opinions of the State Supreme Court that the effect of article 2453 upon executory process under a mortgage was a question of the first impression, in that court, when raised in this suit. At the time, therefore, when this Court and the Circuit Court decided the question, they were without the guidance of any state decision, and compelled to determine it for themselves; and the simple question is, Will this Court, on this writ of error, recede from its position and adopt and enforce the contradictory and subsequently declared views of the State Supreme Court?

As a general proposition, this Court will follow decisions of state courts interpreting their own laws. But there are well recognized exceptions to the rule. One of them, in the language of this Court, is: "When this Court have first decided a question arising under state laws, we do not feel bound to surrender our convictions on account of a contrary subsequent decision of a state court, as in the case of Rowan *vs.* Runnels, 5 How., 139." (Pease *vs.* Peck, 18 How., 395,

398, 399; Burgess *vs.* Seligman, 107 U. S., 20, 33, 34.) In Morgan *vs.* Curtenius (20 How., 1, 3), it was accordingly held that a decision of a state court could not have the effect of making a prior decision of a Circuit Court of the United States erroneous, which was not so when the judgment of that court was given.

It is to be considered that if this Court should follow the decisions of the State Supreme Court in this case it would be to cut down and destroy the rights that vested under the decree rendered by the Circuit Court in the case of the widow Cavailhez *vs.* the widow Remick, in the very litigation of which the present case forms a part. Surely we may assert, with some confidence, that this Court will not surrender its independent judgment, in submission to the general rule, where such injustice and contrariety would be the result. (Town of Roberts *vs.* Bolles, 101 U. S., 119; Carroll County *vs.* Smith, 111 U. S., 556; Block *vs.* Bourbon County, 99 U. S., 686; and Pease *vs.* Peck, and the other cases cited *supra.*)

These cases show that this Court is generally averse to relinquishing its opinion in any case upon a question of state law where it is not convinced by the reasoning of a subsequent conflicting opinion of the state court.

In this case, we submit with deference, the reasoning of the State Supreme Court as to the meaning and effect of article 2453 is not convincing.

The ground on which that Court held that this article had no effect on the foreclosure proceedings under the Maxwell mortgage was that the mortgage was made and recorded before the suit by the widow Cavailhez *vs.* the widow

Remick was brought in the Circuit Court, and that no subsequent suit could cut off the right of the creditor to foreclose it.

But the act of mortgage created, at best, merely a lien on the property in favor of Maxwell. In a word, a mortgage under the Code is a species of pledge, with this difference, that it is not necessary that the mortgagee should have actual possession. (C. C., art. 3280, 3281.) Now a pledge is a mere security, implying no title in the thing pledged. In both pledge and mortgage it requires a subsequent act to transfer and divest the owner's title. According to the code the mortgage gives the creditor "the power of having the property seized and sold in default of payment." (C. C., art. 3278.)

If then Lacassagne's right was limited to a mere *lien* on the plantation, is it reasonable to say, that, because this alleged *lien* was created before the widow Cavailhez instituted her suit in the Circuit Court against the widow Remick, therefore, the executory process, under which the plantation was *sold and conveyed* to Maxwell and Lacassagne, was not an "*alienation*" pending that suit, within the meaning of article 2453? The article in question embodies the familiar maxim, that while a suit is in progress the *status* of things must be preserved against every attempt to change it. *Pendente lite nihil innovetur.* Indeed, the effect of the article is the same as that of the pact *de non alienando* in a mortgage governed by the law of Louisiana. It is difficult, therefore, to see how, with any attention to the meaning of the article, the attempted transfer of title by executory process from the widow Remick to Maxwell and Lacassagne could have failed,

if operative, to change materially the *status* of the plantation, as to the widow Cavailhez.

In its reference to the contention, that the priority in date of the mortgage to the institution of the suit prevented the application of article 2453, this Court said:

> The fact that the plaintiff and Maxwell were mortgage creditors of Marcelline Cavailhez [Remick], and that their mortgage was duly recorded in the mortgage office of the parish, before the suit brought by the widow Cavé was instituted, IS OF NO CONSEQUENCE, SO FAR AS THE PRESENT SUIT IS CONCERNED (p. 125).

The learned state court seems to be mistaken in supposing that the effect of applying the article to this case would destroy the security of the mortgage. As this Court has said, the effect of such application was merely to invalidate the proceedings of seizure and sale, *leaving the mortgage, if valid, still valid*, with the right to institute "*lawful proceedings*" on it.

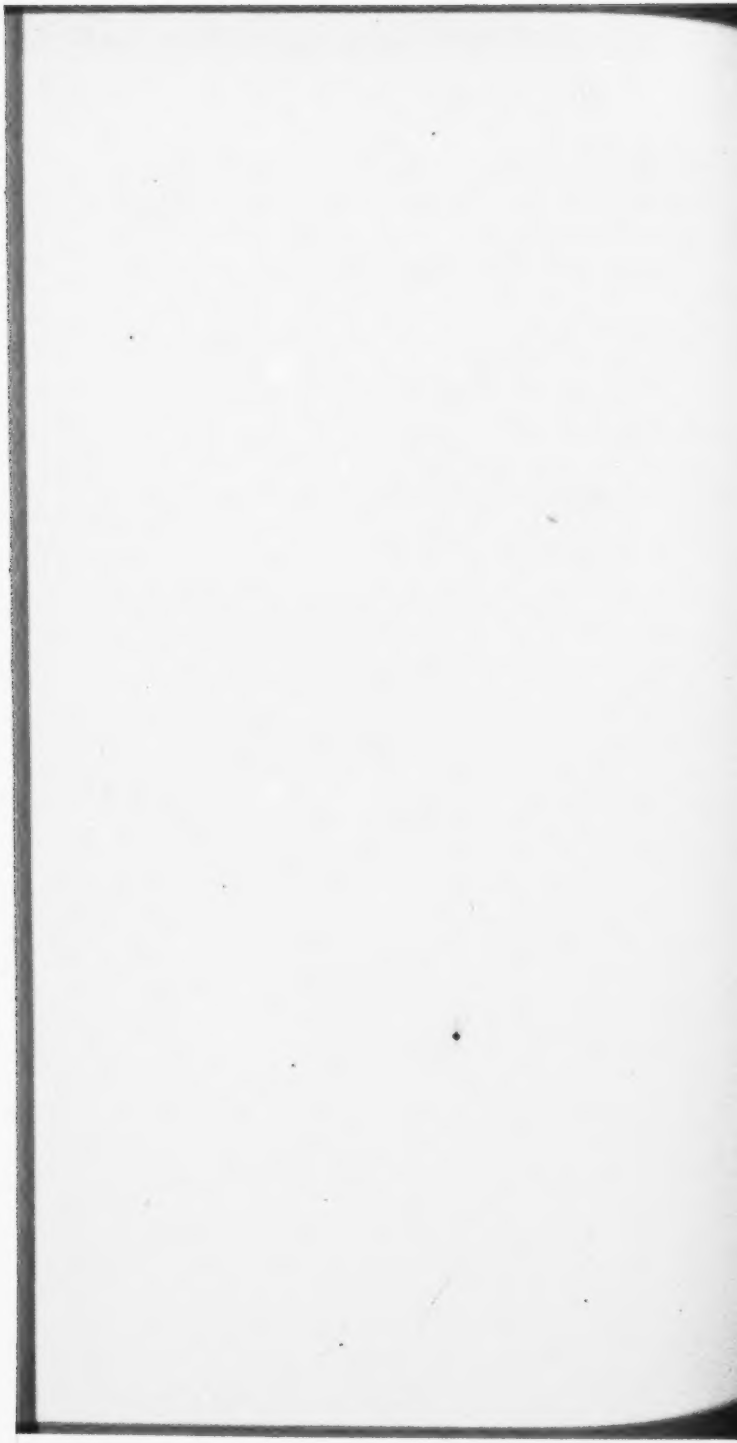
The state court seems to be mistaken also in holding that this Court dismissed Lacassagne's bill for want of jurisdiction, and so did not really decide anything else. This, we have endeavored to show, is not correct. The relief prayed in the bill being to some extent equitable in character, the Court must needs have decided the case, to that extent, on the merits; otherwise the decree of dismissal would have been explicitly for want of jurisdiction. Indeed, this Court say that the Circuit Court "*had authority to make a decree on the merits*,"—language which appears to be repugnant to the theory of the state court as to the scope of this court's opinion.

It appearing, therefore, that the state court has refused to

give the effect to the decrees in question to which they are entitled under the jurisprudence of the state, as held by this Court and the Circuit Court, it is submitted that the judgment of the state court should be reversed.

WM. A. MAURY,
ALBERT VOORHIES,
W. O. HART,
For Plaintiffs in Error.

WASHINGTON, D. C., 1505 PENNA. AVE., *April* 16, 1900.



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No. 962. 62

By. of Senator for Def'ts

Filed Mar. 26, 1900

Office Supreme Court U. S.
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 962.

H. ABRAHAM & SON et al.,

vs.

MARIE L. CASEY, Administratrix, &c.

Brief for Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 301.

H. ABRAHAM & SON ET ALS.

versus

MARIE L. CASEY, ADMINISTRATRIX,

BRIEF FOR DEFENDANT IN ERROR.

There appear two assignments of error in this cause. Rec., p. 255.

"*First.* That this Court (the Supreme Court of Louisiana) erred in overruling the peremptory exception of *res judicata* set up by defendants against the demands of plaintiff, which were based upon two decrees of the Circuit Court of the United States, specially pleaded in this case, one of which decrees was in the matter of *Laurent Lacassagne vs. F. Chapuis, executor, etc.*, taken by appeal to the Supreme Court of the United States and there affirmed in favor of petitioners herein and against said Lacassagne; that said decree of the Supreme Court of the United States maintained the writ of possession under which the said Lacassagne was ejected from the possession of the property in controversy in this case, and petitioners put in possession thereof."

"*Second.* That this Court (the Supreme Court of Louisiana) erred in holding that said defenses were without effect against the said Laurent Lacassagne and his legal representatives."

Reply.

The decision of this Court in Lacassagne vs. Chapuis, 144 U. S., page 119, held, under an action by plaintiff *in equity*, that the dismissal of the bill in equity absolutely, must be "*so modified as to declare that it is without prejudice to an action at law*" (p. 126).

Following that decree rendered at the October term, 1891, the action *at law* was filed in the instant case, in November, 1895 (Rec., pages 1–3).

It was met by exception of plaintiffs in error, under your Honors' aforesaid ruling as *res judicata* (Rec., pages 7, 8) and sustained by the trial Court, page 45, but reversed by the Supreme Court of the State, and remanded for trial on the merits (Rec., pages 118, 122).

Upon the trial on the merits, page 137, the State Court disregarded the decree of the Supreme Court of the State and held against the plaintiff (page 238).

Plaintiff again appealed to the Supreme Court of the State, which *reversed* the lower court, and decreed in favor of plaintiff on his claim *at law*, with the rights incident thereto (page 248).

From this decree, the present writ is before the Court.

ARGUMENT.

The Supreme Court of Louisiana in its decree presently appealed from, held, among other things, the following.

We quote from its decision, pages 249–252:

"The case found its way to the Supreme Court of the United States, and that tribunal held that the remedy of Lacassagne was at law, not in equity, and that if the mortgage was superior to the right of the widow Cavailhez

his remedy at law was ample. The court, in its opinion, referred to the fact that his title had been acquired subsequent to the suit of the widow, and thought the article of our Code avoiding alienations of property pending suit for its recovery applied. The bill was dismissed, with full reservation of Lacassagne to enforce his rights at law."

"While this litigation was pending in the Supreme Court, the Widow Cavailhez died, and her will constituted F. Chapuis her executor and legatee. He mortgaged the property to Abraham & Son, under whose execution the property was about to be sold."

"At this juncture Lacassagne, remitted by the decree of the United States Supreme Court to the assertion of his rights at law, enjoined the sale under the execution of Chapuis' creditors, setting up his title to the property.

This is the suit now before us on a second appeal, the first having been determined by us in 1896 (48th An. 1160).

"On the previous appeal the defense pleaded *res judicata*, based on the decree obtained in the suit of Widow Cavailhez against Mrs. Remick. That defense, as well as the other aspects of the case argued, received our attention. We held that the plea of *res judicata* based on a decree in a suit to which Lacassagne was no party conld not be sustained as against him. The argument there took a wide range and asserted in its general effect that the mortgage granted by the recorded owner before the claims of the widow Cavailhez were made known could not be enforced by the seizure and sale of the property because of the suit of Mrs. Cavailhez to establish her rights as his widow, based on the marriage in France in 1833."

"But our decision maintained that the mortgagee, in good faith acquiring his mortgage on the faith of the recorded title based on the conveyance of J. B. Cavailhez, could not be affected by any fraud imputed to Cavailhez with respect to the wife it is claimed he married in France before he came to Louisiana, and that the enforcement of such a mortgage created prior to the suit of the widow, was not within the inhibition of alienation of property

pending suit for its recovery. Our decree overruling the plea of *res judicata* remanded the case for trial on the merits."

"On the second trial the defendant supplemented their pleadings by urging the exception of *res judicata*, based on the decree of the Supreme Court of the United States on the bill filed by Lacassagne to enjoin the writ of possession issued in the suit of the *Widow Cavailhez against Mrs. Remick*, 144 U. S. 119. On this exception, as well as on the merits, the lower court rendered judgment in defendant's favor, and the case is again before us on appeal."

" The first enquiry is as to the right conferred by the mortgage of this property to Maxwell in 1883, as the plaintiff's title is based on that mortgage, and the mortgage is based on the sale of the property in 1869 by J. B. Cavailhez. He was the " head and master," as our code expresses it, of the community. Whether married in France before he came to Louisiana and contracted the marriage here, is unimportant in testing the effect of his sale of the property involved in this controversy, in 1869. The power of disposition was his, and the title made by him and spread on the public records gave validity to any subsequent sale or mortgage created on the faith of that title."

" If the husband alienates the community property by any fraud, to the injury of his wife, the law gives to her an action against him and his heirs, but the sale by him is entirely valid as to third persons who in good faith have acquired rights on the faith of the title he spreads on the public records. It is a proposition we deem beyond reasonable controversy, that the mortgage to Maxwell, based on the title to the vendee of J. B. Cavailhez, and which had stood unquestioned on the public records for fifteen years before Widow Cavailhez asserted her rights under the marriage contracted in France, was not assailable by her. This proposition is based on the protection accorded those who act on the faith of the public records, so often recognized by our courts and of general recognition in every system of jurisprudence. It is bottomed upon the principle that the true owner, whoever he may be, is bound by the title he puts on the public records, so far as

respects third persons *bona fide* acquiring rights on the faith of that title."

"If the mortgage granted in 1883 was securely protected by law and jurisprudence, it gave to the creditor the right to foreclose it. We can not conceive that this right, so essential to the creditor, could be taken away by a suit brought afterward by the wife asserting her right to the community, subordinated, as are all her rights, to the power of the husband to mortgage or alienate the community property.

"The mortgage creditor, exerting the remedy given him by the contract, seized and sold the property for his debt, and the title passing at the sale was completely vested in the plaintiff Lacassagne."

"The contention is that the sale was void because when made the suit of the widow Cavailhez was pending. Although the Maxwell mortgage was of record when the suit was brought, she carefully abstained from making him a party. The argument seeks to apply the provision of our law which forbids alienations pending a suit to recover property to the prejudice of the plaintiff bringing the suit."

"The article of the Code embodying this provision, has clear application to cases of alienation pure and simple, not to the enforcement of rights created before the suit was brought. The mortgage created a right to seize and sell the property for the payment of the debt. Under our law the mortgage is a *quasi* alienation. The seizure and sale is the exercise of the remedy, and is the consequence of the mortgage. If, then, the mortgage is to be deemed an alienation, the title of the plaintiff is not within the scope of the provision forbidding alienations pending the suit, for the mortgage was granted before the suit."

"There are expressions in the reasoning of the United States Supreme Court which, taken literally and severed from the context and decree, may seem to give color to defendant's pretensions as to the scope and effect of that decree; but the ground that the plaintiff's remedy was at law disposed of the case and points to the decree as containing all that constitutes *res judicata* in any sense known to the law. That decree simply and only dismissed the

bill with full reservation to plaintiff to enforce his rights at law."

"Now, what right could he enforce? The mortgage had merged in the title. The Supreme Court could not have contemplated a suit on a mortgage changed into another right. To remit him to some supposed remedy on a mortgage exposed both to the defense of pre-emption and that of prescription would have been to substitute a mere shadow for the substance of Lacassagne's right. The decree reserved his legal rights given him by the mortgage. Following that decree, when Lacassagne found the property seized under the execution of the creditor of Chapuis, the legatee of the widow Cavailhez, he resorted to the remedy given him by our law. He asserted his title to the property attempted to be levied on as the property of another, and in our view adopted the only practicable method of exercising the right left to him by the Supreme Court."

"Under the mortgage granted by the head of the community, clothed with full competency to grant it wholly irrespective of whether he had or not married in France, the mortgage creditor had the right to seize and sell the property in whose hand soever it might be without regard to any change of title by suit, alienation, descent or any other mode.

Am. and Eng. Encyclop. of Law, Vol. 13, pp. 899, 900 and foot notes, *verbo Lis Pendens; Stuyvesant vs. Hone*, 1 Sandf. (N. Y.) 419; *Watson vs. Dowling*, 26 Cal. 127.

"On what theory, then, are we to hold that the suit to establish the French marriage of Cavailhez, denuded the mortgage of the right it gave the creditor to seize and sell? To so hold would be to simply change our jurisprudence and overthrow a rule of property."

"Nor do we appreciate that the Supreme Court of the United States, in the decision now pleaded as *res judicata* and as effective and intended to destroy the creditor's right to foreclose his mortgage, as sustaining any such contention. The case presented to that court was a bill in equity to restrain the execution of the writ of possession issued by *Widow Cavailhez* on her judgment against *Marceline Diaz, widow of C. H. Remick, deceased.*"

"The plaintiff here, the complainant in that suit, averred his title and possession as the basis for the relief he sought. The court held the plaintiff's remedy was at law, not in equity. We do not think the question of Lacassagne's title was passed upon or intended to be passed upon in that decision. What the Court declared and held was that, on the showing made, 'a Court of Equity can not give the plaintiff any relief until he has established his title by an act at law.' 144 U. S. 124. And all his rights with respect to such action at law were reserved to him."

"We hold the present suit to be such 'action at law' as there contemplated, coupled with injunction to prevent the property being sold under execution for the debt of another alleged not to be the owner."

"The necessary parties are before the Court to adjudicate the question of title raised, and that the suit involves the title is shown by the averments of the petition and by its prayer, which is that plaintiff be decreed the owner of the property and sent into possession thereof, etc."

"On the issue thus presented we think the case is with the plaintiff, and that his claim of ownership must be sustained and his right of possession enforced."

The ruling of your Honors in *144 U. S.* being so precise, there remains only to be replied to the inquiry as to whether or not the rights of a mortgage creditor, in good faith, found to be valid under the laws of Louisiana, can be set aside under the pleadings as presented.

The question is not novel.

Your Honors' latest decision on such question, we find in No. 71 of the October term of 1899, of *Tullis vs. Lake Erie and Western Railroad Company* delivered December 11, 1899, wherefrom we quote:

"As remarked in *Missouri, K. & T. R. Co. vs. McCann*, 174 U. S., 580, 586, 43 L. ed. 1093, 1096; 19 Sup. Ct. Rep. 755, the contention calls on this Court to disregard the interpretation given to a State statute by the

Court of last resort of the State, and, by an adverse construction, to decide that the State law is repugnant to the Constitution of the United States. But the elementary rule is that this Court accepts the interpretation of a statute of a State affixed to it by the Court of last resort thereof."

In case of the *Missouri, K. & T. R. Co. vs. McCann*, 174 U. S. 580, reading from page 586, your Honors say:

"The reasoning now relied on, then, is that, although the Supreme Court of the State of Missouri has interpreted the statute of that State as not depriving a carrier of power, on receiving an interstate shipment, to limit its liability to its own line, this Court should disregard the interpretation given to the State statute by the Court of last resort of the State, and hold that the statute means the very contrary of its import, as declared by the Supreme Court of the State, and upon such construction decide that the State law is repugnant to the Constitution of the United States. But the elementary rule is that this Court accepts the interpretation of the statute of a State affixed to it by the Court of last resort thereof. *Sioux City Trust Company vs. Trust Company*, 172 U. S. 642, and authorities there cited."

The finding of facts of the State Court, viz: that Lacassagne was no party to the proceedings invoked as *res judicata;* and that our action and proceedings thereunder were legal and proper as to facts and law, under and by virtue of Art. 2453 of the Civil Code of Louisiana, which reads:—

"The thing, claimed as the property of the claimant, can not be alienated, pending the action, so as to prejudice his right. If judgment be rendered for him, the sale is considered as the sale of another's property, and does not prevent him from being put in posssession by virtue of such judgment."—

Does not, under the views your Honors have expressed in the cases cited, render it necessary same should be reconsidered.

No Federal question was passed upon by the Supreme Court of Louisiana. It was merely the construction given to a local statute.

This court has frequently held it unnecessary to pass upon such questions.

In the case of *White* vs. *Leovy*, 174 U. S., p. 91, you said (*Syllabus*):

"From the statement of this case made by the Supreme Court of Louisiana in its opinion, quoted in the opinion of this Court, it is manifest that no Federal question was passed upon by that Court, but that its decision was put upon an independent ground, involving no Federal question, and of itself sufficient to support the judgment below; and this Court therefore dismisses the writ of error."

In your opinion it is stated:

" In Remington Paper Co. vs. Watson, 173 U. S. 443, we had occasion to repeat and affirm the rule announced in Eustis vs. Bolles, 150 U. S. 361, 370, that where we find it unnecessary to decide any Federal question, and when the State court has based its decision on a local or State question, our logical course is to dismiss the writ of error."

We pray the affirmance of the decree of the State court and dismissal of the writ of error.

Respectfully submitted,

W. S. BENEDICT,

Attorney for Defendant in Error.

Supreme Court of the United States.

No. 62.—October Term, 1900.

H. Abraham & Son, composed of Henry Abraham and Jacob Abraham et al., Plaintiffs in Error,
vs.
Marie L. Casey, Administratrix of the Succession of Laurent Laccassagne, deceased.

In error to the Supreme Court of the State of Louisiana.

[December 3, 1900.]

A statement somewhat in detail of the admitted facts concerning this protracted and involved litigation is essential in order to simplify and make clear the issues which arise for decision on this record.

Jean Baptiste Cavailhez, a native of France, took up his residence about 1849 in what is now known as the parish of Vermilion, Louisiana. He married Earnestine Diaz, and they there lived together as man and wife, where a daughter, Marcelline, was born. In 1862 Cavailhez purchased a plantation and his title was recorded, and on the 19th of August, 1869, Cavailhez sold to Clarke H. Remick the plantation which Cavailhez had acquired, as aforestated. The consideration was $15,000, $7,000 of which was evidenced by a note of the purchaser, Remick, for that amount, payable on demand to bearer, and bearing 8 per cent. interest from a stated date. The remainder of the price, $8,000, was evidenced by four notes for $2,000 each, maturing at one, two, three and four years from date, bearing 8 per cent. interest from their date until paid. The payment of the five notes was secured by mortgage upon the property.

On the day the foregoing act of sale was passed, (the 19th of August, 1869,) in view of a marriage contemplated to take place between Clarke H. Remick and Marcelline Cavailhez, a marriage contract was entered into between them, determining, as allowed by the laws of Louisiana, the rules which should govern the property relations of the prospective spouses during the existence of the proposed marriage. Jean B. Cavailhez and his wife, Earnestine Diaz, became parties to the contract, and gave to their daughter Marcelline, as her separate property, the note for $7,000, which had been furnished by Remick, who became responsible for the amount thereof to his intended wife as her paraphernal property. Both the act of sale to Remick from Cavailhez and the marriage contract were duly recorded. Earnestine Diaz, the reputed wife of Cavailhez, died some time before 1882. Cavailhez died in 1882, and Remick, the son-in-law, died shortly afterwards in the same year. Remick left sur-

viving his widow, Marcelline, and four minor children. His succession was duly opened in the probate court having jurisdiction, in May, 1882. His widow, Marcelline, qualified as tutrix of the children, and after due proceedings the plantation which Remick had bought of Cavailhez was, at auction, sold by decree of the probate court, and was bought by the widow. The proceeds arising from the probate sale were accounted for in the probate court. The title by which Mrs. Remick thus acquired the plantation was also duly recorded.

On the 22d day of August, 1883, Mrs. Remick, having become indebted to A. G. Maxwell, mortgaged the plantation which had been acquired by her as above stated to secure the Maxwell debt, which was evidenced by two notes, amounting in the aggregate to $3,483.50, which notes were described in the act of mortgage which was recorded.

On the 5th of March, 1884, Jeanne Caroline Cavé, alleging herself to be a citizen of France, filed her bill of complaint in the Circuit Court of United States for the Western District of Louisiana, in which she in substance averred that she was the lawful wife of Jean B. Cavailhez, to whom she had been married in France in 1833; that Cavailhez had deserted her, had come to the State of Louisiana, and there unlawfully married and lived with Earnestine Diaz as his wife; that by the marriage relation which existed between complainant and Cavailhez it resulted that all the property acquired by him, during his residence in Louisiana was community property, of which she was the one-half owner. It was further alleged that at the time Cavailhez deserted her in France he had in his possession separate funds which he had received from her, and that she was entitled to be secured for the repayment of such funds by a legal mortgage upon the undivided portion of the community property belonging to the husband. The death of Cavailhez and of Earnestine Diaz, his reputed wife, was stated. The sale of the plantation to Remick, the marriage contract, the death of Remick and the purchase of the plantation by Mrs. Remick at probate sale, were all alleged, and the averment was made that both Remick and his surviving wife were fully cognizant that the complainant was the lawful wife of Cavailhez, and that all the parties, Cavailhez, Earnestine Diaz, Remick and the daughter Marcelline, had conspired for the purpose of concocting the sale to Remick and the marriage contract as an efficacious means of depriving complainant of her share in the community as the lawful wife of Cavailhez. The sole defendant to the bill was Marcelline Cavailhez, the widow of Remick, not only individually, but also as tutrix of her minor children, and as such administering the estate of her deceased husband. The prayer of the bill was "that said acts of sale and marriage contract . . . be decreed null and void; that your oratrix be recognized as the widow of said Baptiste Cavailhez and his lawful wife up to the date of his death; that the

marriage between said Baptiste Cavailhez and Earnestine Diaz, both now deceased, be decreed absolutely null; that the aforesaid . . . plantation be decreed to be still the property of the estate of Baptiste Cavailhez; that your oratrix be recognized as the owner of one undivided half of said . . . plantation; that she be recognized as a mortgage creditor of said Baptiste Cavailhez in the sum of $5,310, with interest from judicial demand, on the undivided half thereof belonging to said Baptiste Cavailhez."

Mrs. Marcelline Remick answered, both in her capacity as tutrix and individually. She averred the validity of the marriage of her father and mother; charged that even if the previous marriage between the complainant and Cavailhez had taken place as alleged in the bill, the good faith of her mother, Earnestine Diaz, rendered the marriage lawful as to her and her issue. The alleged fraud in the sale of the plantation and the marriage contract was denied. It was moreover averred that her husband Remick, during his lifetime, had expended a considerable amount of money in improving the plantation, and that if the complainant was entitled to the relief which she sought she was in equity bound to pay the value of such improvements.

Whilst this suit was pending in the Circuit Court of the United States the notes held by Maxwell, and which were secured by mortgage as already stated, became due. Maxwell thereupon commenced on May 25, 1885, in the State court having jurisdiction, foreclosure proceedings according to the forms provided by the laws of Louisiana, Mrs. Marcelline Remick, individually and as tutrix, being made the defendant. Under a decree of sale on the 8th of July, 1885, the plantation was sold, and was bought conjointly by Laurent Laccassagne and Maxwell. The formal deed of the sheriff to them was regularly executed and recorded. On the 22d day of October, 1885, Maxwell conveyed to Laccassagne his undivided half of the property thus purchased. Thereafter, on the 11th of January, 1886, the equity cause which was pending at the time of the sale just mentioned in the Circuit Court of the United States, was decided in favor of the complainant, the decree substantially awarding all the prayers of the bill. It declared complainant to be the lawful wife of Cavailhez, and that the sale made by him to Remick was void; that the marriage contract between Remick and Marcelline Cavailhez was likewise void, and therefore that one-half of the property belonging to Cavailhez at the time of his death was owned by the complainant as his widow in community, and that the other half was liable to pay the amount which the complainant had asserted in her bill to be the sum of her separate property received by her husband. The decree, however, recognized in part the right of the defendant to recover for the value of the improvements which had been put by Remick upon the plantation. A writ of possession was issued to enforce this decree, it being immaterial for the purposes of the case to ascer-

tain what was done in execution of the writ. The complainant in the equity suit, Jeanne C. Cavé, after the decree in her favor, died in 1886, leaving a will, in which she instituted Francois Chapuis, a citizen of Switzerland, her universal residuary legatee, and appointed him her executor. Her estate was opened, and in the probate proceedings Chapuis was appointed as executor, and was recognized as universal legatee.

On April the 15th, 1886, Laurent Laccassagne, averring himself to be a citizen of France, filed his bill in the Circuit Court of the United States for the Western District of Louisiana against Francois Chapuis individually, and as universal legatee of Jeanne C. Cavé, and as her executor. The bill alleged the ownership of the complainant of the plantation which had been bought in the Maxwell foreclosure. It averred the decree in the equity cause in favor of Mrs. Jeanne C. Cavé, the fact of her death, and that Chapuis was her executor, and had succeeded to her rights as her universal legatee; it alleged a disturbance of the possession of the complainant by a writ of possession issued to enforce the decree. He, moreover, averred that the court was without jurisdiction to render the decree, because Mrs. Jeanne C. Cavé, the complainant, had falsely represented herself to be a citizen of France, when in fact she was a citizen of the State of Louisiana; it charged that the decree was inoperative as to Lacassagne, because his rights were not involved in the controversy. The prayer was that the decree be vacated; that Chapuis be perpetually enjoined from enforcing it. Chapuis demurred to the bill, first, for want of jurisdiction, because both himself and the complainant were aliens, and, second, because of a want of equity. A restraining order issued which, after hearing, was set aside, and a final decree was ultimately entered, maintaining the demurrers and dismissing the bill. From this decree Lacassagne appealed to this court.

Pending the appeal just referred to, Chapuis, having become indebted to the commercial firm of H. Abraham & Son, mortgaged the undivided half of the plantation, which had been acquired by him as above stated. He also, in the same act of mortgage, transferred to Abraham & Son, as security for the debt due that firm, the claim against the other undivided half of the plantation, which had been allowed Mrs. Jeanne C. Cavé, the complainant in the equity cause. He moreover thereafter caused probate proceedings to be had as to the estate of Jean Baptiste Cavailhez, provoked a sale under the order of the probate court to pay the debts of the estate, and at such sale bought the undivided half of the plantation, which it was assumed belonged to Cavailhez, in accordance with the decree in the equity cause.

In March, 1892, the appeal pending in this court in the case of *Laccassagne* v. *Chapuis* was here decided. The decree of the lower court which dismissed the bill absolutely was "so modified as to declare that it is with-

out prejudice to an action at law, and, as so modified, it is affirmed with costs."

The debt due to Abraham & Son, which Chapuis had secured by the mortgage and transfer, as above stated, matured, and that firm commenced in February, 1893, proceedings in the State court having jurisdiction, to foreclose the mortgage. Thereupon Laurent Laccassagne, in May, 1893, filed his petition in the Seventeenth Judicial District Court in and for Vermilion Parish, Louisiana, against Chapuis and Abraham & Son. He alleged his ownership of the property in virtue of the Maxwell foreclosure and his purchase from Maxwell; he charged that the decree in the original Cavé suit in the Circuit Court of the United States was *res inter alios acta* as to him; that it was void because of a want of jurisdiction growing out of the fact that both parties to the cause were citizens and residents in the State of Louisiana; that the mortgage of Abraham & Son was nothing worth because of the want of title in Chapuis, and prayed that Abraham & Son be perpetually enjoined from enforcing their mortgage against the plantation, and that they with Chapuis or his successors in right be forever restrained from disputing the ownership of the petitioner. Both Abraham & Son and Chapuis excepted on the ground of *res adjudicata* arising from the decree of the Circuit Court of the United States rendered in the suit of Mrs. Cavé, and by a further exception of estoppel alleged also to have arisen from the decrees in said cause, based on the ground that the foreclosure proceedings of Maxwell had been commenced whilst the original equity cause suit was pending. The trial court sustained both exceptions, refused the injunction, and dismissed the petition of Laccassagne. An appeal was taken by Laccassagne to the Supreme Court of the State of Louisiana. In that court the judgment below was reversed, and the case was remanded to the trial court with directions to hear the cause on its merits.

Laccassagne thereupon amended his pleadings, the parties defendant answered, various substitutions of persons took place, caused by the death of necessary parties; interventions were filed, and other proceedings were had, which were confusing and conflicting, and need not be referred to, except to say that the decree of this court in *Laccrssagne* v. *Chapuis* was pleaded as an additional ground for the claim of *res adjudicata* and estoppel. Suffice it to say that, when the issues were finally made up, the cause was decided by the trial court against Laccassagne. He again prosecuted an appeal to the Supreme Court of the State of Louisiana, and the judgment of the trial court was reversed. The court finally disposed of the cause by decreeing the validity of the Maxwell foreclosure sale and the purchase thereunder, and ordered an injunction restraining Chapuis or his successors and representatives, including Abrahams & Co., from interfering with Laccassagne as the owner of the property. To such decree this writ of error is prosecuted.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The Federal questions raised by the assignment of errors are that the court below refused to give due faith and credit to the decree of the Circuit Court of the United States for the Western District of Louisiana and to the decree of this court in the case of *Laccassagne* v. *Chapuis*, (144 U. S. 119.)

To determine whether these contentions are well founded, the exact ground upon which the court below predicated its conclusion must be ascertained. The court decided that the decree of the Circuit Court of the United States for the Western District of Louisiana was not *res adjudicata* against Laccassagne, because he was not a party to that cause, and as to him, therefore, it was *res inter alios acta*. It further held that the *lis pendens* arising from that cause did not estop Laccassagne, since the title which he held originated prior to the inception of the suit and was wholly independent of the issues which it involved.

These general propositions which the court announced were deduced from the following conclusions, viz: 1. Under the Louisiana law Jean B. Cavailhez, as head and master of the community existing between husband and wife, had the undoubted right to dispose of the community property without the consent of his wife, and therefore the deed made by him to Remick was binding upon the community irrespective of whether Mrs. Cavé, the plaintiff in the equity cause, was or was not his lawful wife. 2. That as to the charge of fraud made conjointly against Cavailhez, his reputed wife Earnestine Diaz, his daughter Marcelline, and the purchaser Remick, such alleged fraud was wholly inefficacious even if established as to them, to affect Maxwell, who had acquired his mortgage whilst the property stood on the public records in the name of Remick by a conveyance from Cavailhez, who had the power to make the title. 3. That the right acquired by Maxwell under his mortgage was, by the Louisiana law, a *quasi* alienation of the property in his favor, taking its origin, it is true, from the date of the mortgage given by Mrs. Remick, but relating back to the recorded title from Cavailhez, which was in every respect, as to Maxwell, unaffected by the issues in the equity suit. 4. That the right thus acquired by Maxwell was an independent one, springing from the undoubted power of Cavailhez to sell and from the state of the public records, on the faith of which Maxwell had the right to rely when he accepted his mortgage. 5. That the laws of Louisiana forbidding a transfer of property *pendente lite* did not operate to prevent Maxwell from foreclosing his mortgage pending the equity suit, because, although the foreclosure proceedings were filed after such cause was commenced, the right in virtue of which they were initiated arose long anterior to the

beginning of the equity suit, and was paramount to and independent of all the controversies which were therein presented for decision.

These conclusions of the State court depended alone upon an interpretation of the local law of the State, governing the sale, the record of title to real estate, and the nature under the local law of the rights of a mortgagee creditor. (48 La. An. 1160; 51 La. An. ——.) It is the duty of this court to follow the rule announced on such subjects by the highest court of a State. (*Clarke* v. *Clarke*, 178 U. S. 186–190, and authorities there cited.)

Accepting the rule of property under the Louisiana law to be as announced by the Supreme Court of that State, it is manifest that the proceedings in the equity cause were not *res adjudicata*, and that the *lis pendens* created by that suit did not prevent the exercise by Maxwell of his right to foreclose his mortgage, and therefore the title which he acquired in the foreclosure proceedings was not impaired by the pendency of the suit. But it is argued although this be undoubted, it is not applicable because of the decree of this court in the case of *Laccassagne* v. *Chapuis*. In that cause, however, the decree below which dismissed the bill was so modified as to cause it to be "without prejudice to an action at law." And the court below has expressly decided that the proceeding taken by Laccassagne in the State court, and which is now under review, was the proper method by which he could, according to the Louisiana law, test his legal rights asserted to arise from the Maxwell foreclosure proceedings, and the purchase made thereunder. It is, however, argued that in the opinion in *Laccassagne* v. *Chapuis* this court upheld a construction of the Louisiana law which is in conflict with that law as construed by the Supreme Court of Louisiana in its opinions in this case, and therefore, it is asserted, this court should apply its previous conclusions as to the law of Louisiana instead of now conforming to the view of the Louisiana law subsequently laid down by the Supreme Court of the State. This court, it is said, by virtue of the appeal in the Laccassagne case, was first vested with jurisdiction to consider the Louisiana statute as to *lis pendens*, and therefore, at least, as to the parties to this record, should hold the Louisiana law to be in accord with its previous decision, although by doing so the interpretation of the State law by the Supreme Court of the State be wholly disregarded. But we need not pause to point out the unsoundness of this argument as applied to the question now here, since the premise which the proposition assumes is without foundation. The case of *Lacassagne* v. *Chapuis* came to this court on two demurrers, the one predicated on a want of jurisdiction because both parties were aliens, and the other on an asserted want of equity in the bill. The jurisdictional question as to alienage was disposed of on the ground that the bill was ancillary to the

original suit. Whether the other matters alleged were within the cognizance of a court of equity was fully considered, and it was held that the claim of title in Laccassagne furnished no ground for equity jurisdiction. The court observed: "As the plaintiff was evicted and the plantation was put into the possession of the widow Cavé, a court of equity cannot give the plaintiff any relief *until he has established his title by an action at law.*" True it is that subsequently, in considering whether the mortgage right of Laccassagne created a cause cognizable in equity, the opinion intimated views of the Louisiana law not in accord with the law of that State, as announced by the Supreme Court of Louisiana as hitherto stated. But the passages referred to were merely reasoning conducive to the demonstration that the rights asserted, in the bill, were cognizable at law only, and therefore not the subject of equitable jurisdiction. That the court did not intend to and did not decide what were the legal rights of Laccassagne is at once demonstrated by the fact that the decree below, which dismissed the bill, was amended so as to cause it to be without prejudice to an action at law, and as thus modified was affirmed. To treat the passages in the opinion, which are relied on as having the conclusive import now in argument attributed to them, would of necessity give rise to the following deduction: The opinion on the one hand dismissed the question of legal title from consideration because it was not within the province of a court of equity to decide who held the legal title, nevertheless the question of such title was finally disposed of in the cause.

But the premise contended for pushes to a more flagrant contradiction, since it cannot be accepted without admitting that, although the decree was "without prejudice to an action at law," the right to such action was in substance foreclosed.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.